

RULES AND ORDERS

At Brit. Court of King's Bench.

FOR REGULATING

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The PRACTICE in SUITS

IN THE

King's Bench and Common Pleas,

Abridged and alphabetically digested

UNDER

The different HEADS in PRACTICE:

For the Use of the Profession in general.

By a PRACTITIONER in both COURTS.

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THE RULES and ORDERS OF THE

Courts of King's Bench and Common Pleas,

Abridged and alphabetically digested under the different Heads
of Practice.

ABUSES,

Of the officers of the court, how punished.

King's Bench.

Common Pleas.

BY rule, *Mich. 1654, Sect. 3.*
IT IS ORDERED by the
court, That a jury of able and
credible officers, clerks, and at-
tornies, once in three years, be
impanelled, and sworn to en-
quire,

1st, Of the points usually enquir-
able by the writ, *viz Falsities,*
contempts, misprisions, and offences.

2^{dy}, Of such who have been ad-
mitted attornies or clerks, and
are notoriously unfit, their
names to be presented to the
court, and they to be punished
or removed, as the case shall
require.

3^{dly}, Of new or exacted fees, and
of those that have taken them,
under whatsoever pretence, and
to prepare and present a table

THE same rule *verbatim* in
this court, the only diffe-
rence therein being, that the no-
tice is to be affixed in the *Fleet*
Prison instead of the *Marshalsea,*
or *King's Bench Prison.*

King's Bench.

Common Pleas:

of the due and just fees, that the same may be fixed, and continue in every office, and likewise for the *Marshalsea* or the *King's Bench* Prison.

4thly, And that some persons be enjoined and sworn to give evidence, viz. some clerks of the court, and some attornies in every county, not excluding others.

A C E T I A M S.

King's Bench.

Common Pleas.

To hold to bail.

BY rule, *Mich. 15 Car. 2.*
IT IS ORDERED by the court, for the avoiding of oppression by colour of process issuing out of this court, that no attorney presume, at his peril, to make, or cause to be made, any precept or writ with a clause of *ac etiam &c.* against any heir, executor, or administrator, nor in any case when, by the course of the court, special bail is not required; and that if a defendant shall be lawfully delivered from an arrest on any process, the same defendant shall not be again arrested at the same time, by virtue of any process, at the suit of the same plaintiff; and if any attorney or plaintiff shall offend in the premises, the name of such attorney so offending shall be struck out of the roll of attornies; and further, as well the said attorney as the plaintiff in the said process named, shall be respectively punished as to the court shall seem just.

By

King's Bench.

Common Pleas.

By rule, *Hilary*, 2 *Geo.* 2. IT IS ORDERED by the court, That where any defendant shall be arrested by virtue of any process issuing out of this court, in which the cause of action shall be specially specified and expressed, or a copy of such process shall be delivered to any defendant, according to the form of the statute in such case lately made and provided, and the plaintiff thereupon shall declare; the defendant in such case shall not have liberty of imparling, without leave of the court, in that behalf first to be granted, but shall plead thereunto within the time allowed by the course of the court to defendants sued by original writ; and for want thereof, judgment may be entered against such defendant by default.

Note, This rule is now enlarged to process in the common form, by rules *Trin.* 5. and 10 *Geo.* 2. and by stat. 5 *Geo.* 2. cap. 27. whereby it is enacted, That no special writ or process, specially expressing the cause of action, shall issue, unless the cause of action amounts to 10 *l.*

By a rule of the same term, all clerks and attornies, that intend to proceed according to the above rule, are to take notice, that in suing out such writs they do not insert in the *ac etiam* the whole declaration at full length, but only describe the cause of action shortly.

ACTIONS.

King's Bench.

Where to be brought.

B^Y rule, Mich. 1654, *sect.* 5. **IT IS ORDERED** by the court, That actions on the *case*, *trespass* for goods, *assault*, or *imprisonment*, arising in any *English* county, be laid in their proper counties, unless the same arise where the justices of *nisi prius* seldom come; as *trespass*, and *trover* for goods, *battery*, *imprisonment*, and *slander*, are in themselves notorious in what county they arise, an attorney knowingly laying them out of their proper county (unless in the cases before expressed, or for such other causes as shall be allowed by the judges of the court, and duly made appear to be true) is to be severely punished.

Common Pleas.

Where to be brought.

B^Y rule, Mich. 1654, *sect.* 8. **IT IS ORDERED** by the court, That actions on the *case*, *trespass* for goods, *assault*, or *imprisonment*, arising in any *English* county be laid in their proper counties, unless they arise where justices of *nisi prius* seldom come, as *trespass*, and *trover* for goods, *battery*, *imprisonment*, and *slander*, are in themselves notorious in what county they arise; an attorney knowingly laying them out of their proper county (unless in the cases before expressed, or for such other causes as shall be allowed by a judge of the court, and duly made appear to be true) shall be severely punished.

By the same rule, sect. 12. In case of a removal out of an inferior court, or reversal, the new original must agree in the nature of the action, the sum in demand, and the county, otherwise the bail not liable; but if the party appears voluntarily to such varying original, the appearance shall be good as to the party; but on a cause removed by *habeas* out of the courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Pool*. Counties where the judges of *nisi prius* seldom come, if the action be transitory, it must be laid in the county where the town lies, and bail taken accordingly.

A F F I D A V I T S.

King's Bench.

To be read in court, and for other purposes.

By rule, Mich. 15 Car. 2. IT IS ORDERED by the court, That the true place of abode, and the true addition of every person, who shall make affidavit in court, shall be inserted in such affidavit.

By rule, Mich. 15 Car. 2. IT IS ORDERED by the court, That in all actions of *trespass*, and other actions where the cause of action is alledged to be done *by force and arms*, or *against the peace of the Lord the King*, to be prosecuted in this court, the true addition, degree, quality, or mystery, and also the true place of abode of every defendant, shall be inserted in every such action, at the peril of the plaintiff's attorney.

By rule, Mich. 9 Geo. 2. IT IS ORDERED by the court, That no affidavit sworn before a commissioner in the country, shall at any time hereafter be read in court, or before the master; but that every such affidavit ought first to be filed, and a copy thereof made, and such copy read; and that all such affidavits be brought to the clerk of the rules of this court, to be filed in such convenient time, that copies of them may be duly made, and delivered to the party filing the same.

Common Pleas.

To be read in court, and for other purposes.

By rule, Trin. 2 W. & Mary, IT IS ORDERED by the court, That the Secondaries of the several offices shall not file any affidavits taken before any person that is not commissioned to do the same, and to that end books of the names of all such persons as are or shall be lawfully authorized to take affidavits in the country, to be made use of in this court, shall be delivered to and kept by the said Secondaries; and that no affidavit shall be read in court before the same be filed.

By rule, Hilary 11 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this term, all affidavits to be produced, read, or made use of before any of the prothonotaries of this court, on taxation of costs, and other matters to them referred, be filed by the secondaries in the respective prothonotaries office.

By rule, Easter, 13 Geo. 2. IT IS ORDERED by the court, That from and after the 5th day of *May*, in this present term, all such affidavits to hold the defendant to bail, or of the service of process where only a common appearance is required, may be sworn before the plaintiff's attorney being a commissioner, and may be made use of for the purpose aforesaid.

By rule, Hilary, 17 Geo. 2. IT IS ORDERED by the court, That from and after the first day of next *Michaelmas* term, instead

of an oath made *viva voce* of the due acknowledgement of such fines; an affidavit or affidavits in writing on parchment shall be made and annexed to every fine so taken as aforesaid; in which affidavit or affidavits, the person or persons making the same shall swear, That he or they knew the party or parties acknowledging such fine, that the same was duly signed and acknowledged; that the party or parties acknowledging, and also the commissioners taking the same, were all of full age and competent understanding; that the *femes covert* (if any) were solely and separately examined apart from their husbands, and freely and voluntarily consented to, and acknowledged the same; and that the conusor or conusors, and every of them, knew the same to be a fine, to pass his, her, or their estate or estates, which fine, together with such affidavit or affidavits annexed, shall be transmitted to the Lord Chief Justice, or some other justice of this court for his *allocatur* thereon; and such affidavit or affidavits shall remain annexed to such fine, and be left with the same in the proper office. AND FURTHER, That all and every such affidavit and affidavits as aforesaid, except where the person or persons, at the time of their acknowledging the fine, are in *Ireland*, or some other parts beyond the seas, shall be made by some attorney or attornies of the courts of *Westminster Hall*, or of the great sessions in *Wales*, or of the counties palatine of *Chester*, *Lancaster*, and *Durham*, and shall be sworn before a person duly authorized

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rized to take affidavits in this court. AND FURTHER, That if any such affidavit or affidavits, as aforesaid shall be made and annexed to any fine, and transmitted to the Lord Chief Justice, or any other justice of this court for his *allocatur* thereon, before the said 1st day of next *Michaelmas* term, the same shall be served and allowed, instead of an oath made *visu voce* of the due acknowledgment of such fine.

A P P E A R A N C E.

King's Bench.

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Entering the same &c.

Entering the same &c.

BY rule, Mich. 1654, *sect.* 10. *IT IS ORDERED* by the court, That an attorney of either bench accepting a warrant, or subscribing a process, declaration, or warrant to appear, be compelled to cause an appearance, or liable to an attachment, or put out of the roll, as the cause requires, and the party not to be received to countermand such appearance after his retainer.

That no person, without rule of court, order of judge, or of a prothonotary, and notice to the adverse party, or his attorney, change or shift his attorney; and such attorney newly coming in, to take notice, at his peril, of the rules whereunto the former attorney was liable, had he continued.

That a retainer of an attorney of the Common Pleas, by an attorney of the upper bench, and *converso*, be a sufficient excuse to the attorney so retained, acting

BY rule, Mich. 1654, *sect.* 13. *IT IS ORDERED* by the court, That appearances be duly entered with the prothonotaries or filacers of this court respectively, with whom the same ought to be entered; but if special bail be requirable in the case, the plaintiff not to be concluded by such appearances, if he insists on it.

That where an appearance is on the original writ, if the defendant's appearance be not entered of record, the defendant's attorney is to give his hand to the plaintiff's attorney on the delivery of the declaration, that he appeareth thereunto.

That any attorney of either bench accepting a warrant to appear, or subscribing a process, declaration, or warrant to appear, shall be compelled to cause appearance, or be liable to an attachment, or put out of the roll, as the case requires, and the party not to be

Rules and Orders of the

King's Bench.

ing according to such retainer; and the attorney so retained without warrant from the party, to be liable to punishment.

By rule, Easter, 1657, *IT IS ORDERED* by the court, That all clerks of the office, *filacers*, and attornies at large, do, within ten days after the end of every term, deliver to the secondary, a note of all such appearances as have been made unto them the term before, and by whom they were made, so that he that is appointed to enter the bails may see, whether bails be filed for every such appearance or not. **AND FURTHER**, That no clerk, *filacer*, or attorney, do deliver any declaration of this court to any solicitor, or other person, but to the clerks, *filacers*, and attornies at large of this court, on pain to forfeit for the first offence ten shillings, and for every other offence twenty shillings.

By rule, Trin. 4 Will. and Mary, *IT IS ORDERED* by the court, That if any defendant hath voluntarily appeared at the suit of any plaintiff in any action whatsoever here in court presented, such appearance shall be held of no force or effect, unless the attorney for such plaintiff sue out, within fourteen days after such appearance, a writ of *latitat*, or bill of *Middlesex*, where the defendant abides in *Middlesex*.

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be received to countermand such appearance after his retainer.

That no person, without rule of court, order of a judge, or prothonotary, and notice to the adverse party, or his attorney, shall change or shift his attorney, and such attorney newly coming in, is to take notice, at his peril, of the rules whereunto the former attorney was liable, had he continued.

That a retainer of an attorney of the Common Pleas by an attorney of the upper bench, and *e converso* be a sufficient excuse to the attorney so retained, acting according to such retainer, and the attorney so retained without warrant from the party to be subject to punishment.

That if a *capias* be returned in court *non est inventus* against a prisoner in the *Fleet*, he be compelled to appear on a *habeas corpus ad respondendum*, as well at the suit of a stranger, as at his suit whereupon he is imprisoned, and to answer to a declaration according to the rules of the court, or that judgment be entered against him.

That he that reverseth an *outlawry* have an attorney of record present, who must undertake an appearance to a new original, and such attorney shall be compelled to appear, and that the defendant, or his attorney, give notice to the plaintiff or his attorney of such reversal, the same term, or in the vacation next after it.

By the same rule, sect. 25. *IT IS ORDERED* by the court, That in a judgment by *non sum informatus*, or *nil dicit* in *eject' firmæ*, the *capiatur* be entered on the judgment.

That

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That on a cause removed by *habeas corpus* out of an inferior court, having jurisdiction of the cause, if judgment be given for the plaintiff, the costs below are to be considered; and cast into the judgment, if for the defendant, the charge of putting in bail.

That the principal in any bond or bill obligatory do not; for the time to come, give a warrant to appear for, or confess judgment against his surety; and that after the 22d of *January* next, no judgment be confessed for, or given against the surety on any such warrant given by the principal.

That sixteen days be allowed for the signing of judgment after every term, except *Easter* term, on causes depending in the term precedent.

Note; *The rule*, Mich. 14 Jac.

1. is by the foregoing rule become totally useless touching the business of entering an appearance.

By rule, Hil. 14 & 15 Car. 2.

IT IS ORDERED by the court, That if any person be committed to the *Fleet* by *habeas corpus* in this present term, or in any other *Hilary* term, or in the vacation following this term, or any other *Hilary* term, unless the plaintiff or plaintiffs, at whose suit the prisoner stands charged at the *Fleet*, shall bring such prisoner to the bar of this court by *habeas corpus*, and declare against him within six days after *Trinity* term begun, such prisoner may be discharged by *superfedeas* to be issued of course out of the prothonotaries office of this court, where the commitment of the said prisoner, with

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with his causes is entered, so as such prisoner first enters his appearance by attorney with the said prothonotary, in case of an attachment of privilege, or for a plaint, or with the filacer on other process returnable in this court, and do bring a certificate under the hand of the warden or clerk of the *Fleet*, that no proceedings by *habeas corpus* have been had against him within the time aforesaid.

And if any person be committed to the *Fleet* in any *Easter* term, or in the vacation following any *Easter* term, unless the plaintiffs bring such prisoner to the bar of this court by *habeas corpus*, and declare against him within six days after *Martinmas* term began :

And if any person be committed to the *Fleet* in any *Trinity* term, unless the plaintiff or plaintiffs bring the prisoner to the bar of this court by *habeas corpus*, and declare against him before the end of *Michaelmas* term following, such prisoner may be discharged in manner aforesaid.

And if any person be committed to the *Fleet* in any *Michaelmas* term, or in the vacation following after any *Michaelmas* term, unless the plaintiff or plaintiffs bring the prisoner to the bar of this court by *habeas corpus*, and declare against him within six days after *Easter* term begun, such prisoner may be discharged in manner aforesaid, and the plaintiff or plaintiffs may declare on such appearance entered, the next term after such appearance, or *superseas* granted; and the attorney

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attorney appearing for such prisoner shall be bound to take a declaration, and not afterwards. AND FURTHER, That if the plaintiff or plaintiffs at whose suit such prisoner is arrested, and in custody, do not remove such prisoner by *habeas corpus* to the Fleet, nor the prisoner enter appearance in manner aforesaid, such prisoner may be discharged by *superfedeas* in the end of the third term after the arrest, according to the course antiently used; and the plaintiff may declare on such appearance the term following, but not after; but if such prisoner cause appearance to be entered for him by attorney, and cause notice thereof to be given to the plaintiff or his attorney; and if oath thereof be made in writing, and filed in court, unless the plaintiff or plaintiffs declare against such prisoner in the term next after such appearance, the prisoner may be discharged by *superfedeas*, so as oath be made by the attorney for the defendant, that no declaration hath been delivered or tendered to him; and the plaintiff or plaintiffs may declare against the defendant the term next after such appearance entered, but not afterwards.

AND FURTHER, in case any such prisoner shall hereafter be brought to the bar of this court by a writ of *habeas corpus*, returnable at any day certain, being before the day of appearance of the third return of any term, and the said prisoner name an attorney who shall appear for him at the suit of the plaintiff in the action in the said writ specified, the said defendant be compellable

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to plead by the last day of the said term, to a declaration to be delivered to the said attorney, if the plaintiff give a rule for him so to do.

Where any prisoner is brought to the bar by such writ, returnable after the day of appearance of such third return of any term, the defendant of course to have imparlance until the next term following; but if such prisoner refuse to nominate an attorney to appear for him, then such prisoner is to plead within six days, according to the said act, *provided* there be eight days after the return of the *habeas corpus*, to give a rule to be out within the term.

By rule, Easter, 24 Car. 2. **IT IS ORDERED** by the court, That every attorney retained to appear for any defendant to any writs issuing out of this court, which are made by the respective *filacers* of this court, shall from henceforth, according to the course of this court, enter the appearances of all the defendants with the proper *filacer* of this court, of the city or county, from whom such process respectively did issue, and where the action is laid; and pay the said duty of fixpence unto his Majesty to the said *filacer*, together with the said *filacer's* fee, on the penalties in the said act of parliament mentioned.

AND FURTHER, That no defendant shall be permitted to imparlance against his plea, or move to change the *venue* in any action, until his appearance be entered as aforesaid.

And that no attorney of this court shall receive any declaration, unless an appearance be first entered

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entered with the filacer as afore-
said, under the like penalty.

And that no attorney shall de-
liver, or cause to be delivered,
any declaration or count to the
defendant's or tenant's attorney,
or to any person for him, until
the appearance (to warrant such
delivery) be truly entered with
the proper officer, under the pe-
nalty to be expelled the court.

The filacers are to search the
dogget rolls, to discover offences
against this rule, and report the
same to the court.

By rule, Hil. 6 Geo. 1. *IT IS
ORDERED* by the court, That
after the last day of the term,
every attorney of this court ac-
cepting or subscribing any war-
rants to appear for any defendant
to any writ issuing out of this
court, shall, within *four* days af-
ter the appearance day to the re-
turn of every such writ in *Lon-
don* or *Middlesex*, and within *eight*
days after the appearance day in
every writ, in any other county,
enter the appearance of such de-
fendant with the proper officer;
and if any attorney accepting any
warrant to appear, or subscribing
any process or warrant to appear,
do not enter such appearance
within the time aforesaid, he
shall, for such offence, be liable
to an attachment, and shall not
be discharged therefrom, till he
hath paid full costs to the plain-
tiff for the prosecution in such at-
tachment, and the defendant,
when he appears, shall be com-
pelled to plead as of the time
when he should have pleaded, if
his appearance had been duly en-
tered,

By

King's Bench.

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By rule, Hil. 7 Geo. 2. *IT IS ORDERED* by the court, That in notices to appear to be served on defendants with copies of process, pursuant to stat. 5 Geo. 2. the day of the return of such process must be inserted, although it happens to be on a Sunday.

By rule, Hil. 8 Geo. 2. *IT IS ORDERED* by the court, That from and after the last day of the term, in all cases where a prisoner in the *Fleet*, or other goal or prison, is discharged, or ordered to be discharged by this court, or any of the justices thereof by *supersedeas* for want of prosecution, and such prisoner be afterwards arrested, or detained in custody by action of debt brought on a judgment obtained in the cause whereon such prisoner was so discharged, or ordered to be discharged, that a common appearance shall be accepted for the defendant in such action of debt on judgment.

ATTACHMENT,

King's Bench.

Precipe to be left with the signer of writs.

BY rule, Hilary, 20 Geo. 2. *IT IS ORDERED*, That every attorney of this court who shall sue out any attachment of privilege against any defendants, shall leave a *precipe* with the signer of the writs, with the defendants names, not exceeding four in each writ, with the agent's or attorney's name who sued out the same; and all such *precipes* shall be entered on the roll where the *precipes*

Common Pleas.

To be sealed by the clerk of the warrants.

BY rule, Trinity, 24 Eliz. *IT IS ORDERED*, That no writ of privilege be granted either in or out of term, without being signed by one of the justices of the court for the fee of *fourpence*, and no more, to the justices for every such writ.

By rule, Trin. 29 Car. 2. *IT IS ORDERED*, That the clerk of the warrants, at the end of this and every other term, shall certify

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precipes of *latitats*, and all other writs issuing out of this court are entered; and the officer who signs the writs in this court shall not sign such attachment, till a *precipe* has been left with him for that purpose.

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tify under his hand to the seal office of this court the names of all attornies who have discontinued, and are forejudged and struck off the roll, and have not filed any warrant of attorney, nor continued their names on the roll for above four terms past, and that for such persons no writ of privilege or attachment be sealed, till they have their certificate from the clerk of the warrants, or have their said writs signed by him, to testify that their names are on the roll of attornies, for which no fee is to be paid.

AND IT IS FURTHER ORDERED, That no attorney, at any time sworn and entered on the roll, shall have his privilege as a clerk to any prothonotary of this court, but only as an attorney according to the antient custom.

By rule, Trin. 9 W. 3. **IT IS ORDERED**, That no attorney shall, for the future, sue out, or cause to be sued out, in his own name, or at his own suit, any writ of privilege, attachment, *prop. capias*, or other such process, and that the keeper of the seal of this court, or his deputy, do not hereafter seal any writ of privilege, attachment, *prop. cap.* or other such process, unless it be first stamped or signed by the clerk of the warrants, or his deputy, for which no fee is to be paid, in order to shew that such person is an attorney of the court duly entered and continued on the broll; and that every such writ or process not stamped or signed as aforesaid by the clerk of the warrants, or his deputy, shall be of no force to free such person from arrest, or to require bail, or to

King's Bench.

That none be admitted an attorney of this court for the time to come, unless he has practised as a common solicitor in this court for five years last past, or has served five years as a clerk to some judge, serjeant at law, practising council, attorney, clerk, or officer of one of the courts at Westminster, unless his master dies, or leaves off practising, and be also on examination found of good ability and honesty for such employment, and that sufficient proof in writing be made to the prothonotary of such service, on a desire of admittance, and then to be filed gratis.

Are now to be sworn and admitted, according to stat. 2 Geo. 2.

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By rule, Mich. 1654, sess. 1: IT IS ORDERED, That none be admitted an attorney of this court in future, unless he has practised as a common solicitor in this court for the space of five years now last past, or has served the space of five years as a clerk to some judge, serjeant at law, practising council, attorney, clerk, or officer of one of the courts at Westminster, unless his master dies or leaves off practice, and is also, on examination, found of good ability and honesty for such employment, and that sufficient proof in writing be made of such service to the prothonotary, on a desire of admittance, and filed with the clerk of the warrants without a fee.

Are now to be admitted and sworn, according to stat. 2 Geo. 2.

By rule, Mich. 2 Geo. 2. IT IS ORDERED, That whoever would be admitted an attorney, must apply for that purpose before the last week in term.

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Were to be admitted of some of the inns of court.

By stat. Mich. 1654, sect. 1. **IT IS ORDERED**, That all officers and attornies of this court be admitted of some inn of court or Chancery, by the beginning of next *Hilary* term, or in the same term wherein they are admitted officers or attornies, and be in Commons one week in every term, and take chambers there; or in case that cannot be done conveniently, yet to take chambers or dwellings in some convenient place, and leave notice with the butler where there chambers or habitations are, on pain of being struck off the roll.

By rule, Mich. 3 Ann, **IT IS ORDERED**, That all attornies and clerks of this court, not already admitted into one of the inns of court, or Chancery, shall be admitted into some of them, if these honourable societies shall think fit, before the end of next *Hilary* term, and take chambers there (if it conveniently can be done) else that they take lodgings in convenient places near the said inns, and leave word with the butlers or porters of such inns where there chambers or habitations are, on pain of being struck out of the prothonotaries book, and the roll of attornies, except such persons who are, or hereafter shall be, house-keepers in *London, Westminster, Southwark*, or the suburbs thereof, and the liberty of Tower of London, and St. Catharines there; and such who are sworn attornies of any courts within the said cities, town, and liberties, and that for the

Common Pleas.

Were to be admitted of some of the inns of court.

By rule, Mich. 1654, sect. 1. **IT IS ORDERED**, That all officers and attornies of the court be admitted of some of the inns of court or Chancery, in the same term wherein they are admitted officers or attornies, and be in commons one week in every term, and take chambers there; or in case they cannot conveniently do so, yet to take lodgings or dwellings in some convenient place, and leave notice with the butler where their chambers or habitations are, under pain of being struck off the roll.

By rule, Mich. 36 Car. 2. **IT IS ORDERED**, That all clerks and attornies of this court not already admitted in some of the inns of court or Chancery, shall be admitted into some of them, if these honourable societies shall think fit, before the end of next *Hilary* term, and take chambers there (if it can conveniently be done) else that they take lodgings in convenient places near the said inns, and leave word with the butlers or porters of such inns where there chambers or habitations are, on pain of being struck out of the prothonotaries book, and the roll of attornies, except such persons who are, or hereafter shall be, house-keepers in *London, Westminster, Southwark*, or the suburbs thereof, and the liberty of the Tower of London, and St. Catharines there; and such who are sworn attornies of any courts within the said cities, town, and liberties, and that no person whatsoever shall

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From the future no person whatsoever shall be sworn an attorney, or admitted, or entered a clerk of any of the said courts, or offices thereunto belonging, (except the persons before excepted) unless first admitted of one of the inns aforesaid, and bring and produce at the time of his being sworn an attorney, or admitted, or entered a clerk as aforesaid, a certificate under the hand of the treasurer or principal of the inn whereof he is admitted, which they are respectively to give without being paid any thing for the same, testifying such his admission; which certificate every attorney or clerk so sworn of the said court of Queen's Bench shall deliver to the secondary of the said court, to be by the said officer filed, before the name of such attorney, shall be entered into the roll of attorneys; unto which file of certificates the respective treasurers and principals of the said inns of court and Chancery, shall or may, from time to time, resort, as they shall see cause, without paying any thing for the same.

That no attorney already sworn, or clerk already admitted, or who hereafter shall be sworn or admitted, and who are or shall be admitted into any of the societies aforesaid, shall put himself out of the society whereof he is or shall be admitted, until he be admitted of some other of the said societies, and deliver to the treasurer or principal of such society whereof he was first a member, a certificate in writing, signed by such treasurer or principal, testifying his being admitted of such other society, except such person shall totally leave

off

shall hereafter be admitted or sworn a clerk and attorney of this court, unless first admitted of some of the inns of court or Chancery, and brings and produces, at the time of his admission, a certificate signed by the treasurer or principal of the inn whereof he is admitted (without paying any thing for the same) testifying his admission; which certificate he shall deliver to the prothonotary, in whose office he shall be so admitted, to be filed by the prothonotary before he enters such clerk's name into his book, kept for that purpose; and every clerk, or attorney so sworn shall deliver such certificate to the clerk of the warrants for the time being, to be by him filed, previous to the entry of such attorney's name on the roll, which file of certificates the treasurers and principals may, from time to time, examine as they shall see cause, without paying any thing for the same.

By rule, Mich. 4 Ann, after recapitulating the former rule, IT IS ORDERED, That no attorney already or hereafter to be admitted into any of the societies aforesaid, shall put himself out of the society into which he has been admitted, until he shall be admitted of some other of the inns of court or Chancery, and deliver to the treasurer or principal of such society of which he was first a member, a certificate in writing, signed by such treasurer or principal, testifying his being admitted of such other society, except such person shall totally leave off practice.

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AND

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off the practice of the law, as an attorney or clerk in any of the courts at *Westminster*.

That from the end of this present term, the attornies and clerks which now are, or shall be admitted into any of the inns of Chancery, do and shall come into and continue in Commons for the time or times as by the orders of such society whereof they are or shall be admitted, is, are, or shall be ordered, limited, or appointed for them so to do; and in case any attorney or clerk aforesaid shall offend against this rule, or any part thereof, such attorney shall be put out of the roll of attornies; and such clerk so offending shall be discharged from the office to which he belongs, until he or they give obedience to this order; and the secondary of this court, and all other officers whom it may concern, are hereby required to obey this order, and see that the same as to themselves be duly observed.

IT IS HEREBY FURTHER ORDERED, That the respective treasurers and principals of the inns of Chancery, and the ancients, rulers, and governors of the same, shall, from time to time, by such ways and means as they shall see fit and convenient, procure a list of the names of such attornies and clerks of this court who are not admitted of any of the said inns of court or Chancery; which list they shall yearly, in *Michaelmas* term, deliver to the Right Honourable the Lord Chief Justice of this court for the time being, in order that offenders against this order may be compelled to give obedience to the same.

AND

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AND IT IS FURTHER ORDERED, That all attornies, who at present are, or hereafter shall, be admitted into any of the aforesaid societies, shall come into and continue in commons for the time appointed by the rules of such society; and in case any attorney shall offend against this rule, or any part thereof, he shall be struck off the roll, or, if a clerk, he shall be discharged, and displaced from the office to which he belongs, till he pays obedience to this rule; and the several prothonotaries, and the clerk of the warrants, are hereby required to pay obedience to this order, and see that the same, as to themselves, be duly observed.

AND IT IS FURTHER ORDERED, That the treasurers, principals, ancients, rulers, and governors of the inns of court and Chancery, shall, from time to time, procure a list of the names of such attornies and clerks of this court as are not admitted of any of the said societies; which list they shall yearly, in *Michaelmas* term, deliver to the Right Honourable the Lord Chief Justice of this Court, that offenders against this rule may be compelled to pay due obedience thereto.

AND IT IS FURTHER ORDERED, That the said treasurers, principals &c. shall procure a list of the names of such persons as practise as attornies, or clerks in this court, who are neither sworn attornies, or admitted clerks in any of the offices of this court; which list is to be delivered as above, that such offenders may be proceeded against as the court shall direct.

At

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AND IT IS ALSO FURTHER ORDERED, That the said treasurers, principals, ancient, rulers, and governors, in like manner procure a list of the names of such persons as presume to practise as attornies or clerks of this court, who are neither sworn attornies, or admitted and entered as clerks in any of the offices of this court; which list is to be delivered as above directed, to the intent that such offenders may be proceeded against in such manner as the court shall think fit.

At what time to appear in court each term.

By rule, Mich. 1654, sect. 1. IT IS ORDERED, That all officers and attornies of this court appear in person in this court, on or before the 14th day of *Michaelmas* term, and on or before the 7th day of every other term, on pain of forfeiting 10 s. for the first default, 20 s. for the second default, and of being struck out of the roll on the third default. The appearance to be entered with the prothonotary, and the defaulters to be delivered to the court on oath, if required, within three days after the time appointed for appearance.

By rule, Trin. 14 Car. 2. IT IS ORDERED, That all attornies of the court shall appear in court personally on or before the 14th day of *Michaelmas* term, and on or before the 7th day of every other term, on forfeiture of 10 s. for the first default, and 20 s. for the second.

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At what time to appear in court each term.

By rule, Mich. 15 Eliz. IT IS ORDERED, That every attorney of this court shall attend in court by the second return of every term, *Michaelmas* term excepted, and in that term, by the third return at farthest, on pain to forfeit to the box 3 s. 4 d. for every such offence, unless he shall have a reasonable excuse well proved.

By rule, Trinity, 24 Eliz. IT IS ORDERED, That if any attorney of this court absent himself two terms together from the said court, except by reason of sickness, or other like urgent cause, to be allowed of by the court, he shall be forejudged in court, and be no longer an attorney thereof.

By rule, Easter, 12 Jac. 1. IT IS ORDERED, That every attorney of this court shall give his attendance at the court by the second return of every term, saving only in *Michaelmas* term, and then

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then by the third return at farthest, on pain to forfeit to the poor's box for the first offence 40 s. and for the second offence to be expelled this court, unless he shall offer a just and reasonable excuse to the satisfaction of the court.

By rule, Mich. 1654, *IT IS ORDERED*, That all officers and attornies of this court appear in person in court, on or before the 14th day of *Michaelmas* term, and on or before the 7th day of every other term, on pain of 10 s. for the first default, 20 s. for the second default, and of being struck out of the roll for the third default. The appearance to be entered with the clerk of the warrants, and the defaulters to be delivered to the court, on oath if required, within three days after the time required for appearance.

By rule, Hilary 14 & 15 Car. 2. *sect. 2. IT IS ORDERED*, That every attorney of the court do appear in person within the times limited by rule *Mich. 1654, sect. 1.* under the penalties before-mentioned for their defaults.

Are to enter in the King's Bench office all pleas and demurrers.

By rule 2, Trin. 14 Car. 2. *IT IS ORDERED*, That every attorney shall enter in the office of this court, all pleas and demurrers in law, within three days after the end of every term.

Are to continue and make entries in the office where first settled.

By rule, Hilary, 8 Car. 1. *IT IS ORDERED*, That no attorney shall enter or exemplify any common recovery, or draw, copy, or enter, any declaration, plea, issue, demurrer, or other cause issuing out of the prothonotaries office, but shall chuse some clerk of the said office wherein himself entereth to do the same, on pain of suspension from his practice for the space of two terms, and further punishment, at the discretion

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tion of this court, for the first offence, and for the second offence, to be expelled the court for ever.

By rule, Mich. 1654, sect. 6. IT IS ORDERED, That every prothonotary's clerk do apply himself in future to one prothonotary's office only, and do give his attendance, and make his entries in that prothonotary's office.

IT IS FURTHER ORDERED, That every attorney shall cause his causes to be entered in that office where he first settles, and no other, except by the leave of all the justices of this court, first had and obtained under their hands, on reasonable cause to them assigned, on pain of being expelled this court for ever; and no prothonotary's clerk shall remove from the office where he first settles, without the like leave, under the same penalty.

By rule 1, Trinity, 21 Car. 2. IT IS ORDERED, That no attorney of this court, without licence of the court, on just cause shewed and allowed, first had, shall shift from the prothonotaries office where he has or shall make his election, and be sworn and settled, on pain of incurring the displeasure of this court; and such penalties as the court shall think fit to inflict for the first offence, and to be expelled from the court for the second offence. **AND IT IS FURTHER ORDERED,** That no prothonotary of this court shall hereafter permit or suffer any such removing or shifting attorney to enter any of his causes in his office contrary to this rule.

By rule 2, Trinity, 21 Car. 2. IT IS FURTHER ORDERED,
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by and with the consent of the respective prothonotaries, that they shall permit and suffer each other respectively, by themselves, or their respective clerks, to search each other's docquets and judgment books, at seasonable and convenient times, for the better discovery and prevention of such abuses in future: and if any matter or business be entered in any prothonotary's office contrary to the aforesaid rule, that then such prothonotary shall, on notice and request made to him, repay the fees recived for such business to the prothonotary to whom such fees did of right belong.

Not to be changed without an order and notice.

By rule, Mich. 1654, *sect.* 10. **IT IS ORDERED**, That no person without rule of court, order of judge, or secondary, and notice to the adverse party, or his attorney, change or shift his attorney; and such attorney newly coming in, is, at his peril, to take notice of all the rules to which the former attorney was liable, had he continued.

Are liable to attachment for not entering an appearance, according to their undertaking.

By rule, Mich. 1654, *sect.* 10. **IT IS ORDERED**, That any attorney &c. *verbatim*, as in the opposite rule in the Common Pleas of the same date.

Not to be changed without an order and notice.

By rule, Mich. 1654, *sect.* 13. **IT IS ORDERED**, That no person without a rule of court, order of judge, or prothonotary, and notice to the adverse party, or his attorney, change or shift his attorney, and such attorney newly coming in, to take notice at his peril of all the rules to which the former attorney was liable, had he continued.

Are liable to attachment for not entering an appearance according to their undertaking.

By rule, Mich. 1654, *sect.* 13. Any attorney accepting a warrant to appear, on subscribing a process, declaration, or warrant to appear, shall be compelled to cause appearance, or be liable to an attachment, or be struck out of the roll, as the case may require, and the party not to be received to countermand such appearance after his retainer.

Are

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Are to attend the court on motion.

By rule, Easter, 1656, and after, 1662, 14 Car. 2. *IT IS ORDERED*, That on notice given any clerk or attorney of this court to attend the court on any motion to be made, if the said clerk or attorney shall neglect to appear in court, according to such notice, he shall pay 10 s. to the box for every such offence.

Are not to be summoned to attend at a judge's chambers during the sittings of the court.

By rule Mich. 11 Geo. *IT IS ORDERED*, That no attorney, or other person, shall be summoned to attend any justice of this court, nor any matters be transacted before such justice at his chambers during the sittings of the court at *Westminster*, and all orders and other transactions so made shall be vacated.

Are to make rules after the third day after term.

By rule 2 Trin. Car. 2. *IT IS ORDERED*, That no rule shall be made by any justice of this court in any action pending therein, after the third day next after the end of any term, and that no attorney of this court shall attend any of the justices thereof to make any rules after the third day next after the end of any term, and that no rules shall be made peremptorily to attend after the third day after the end of any term, and that all rules made after the third day after the end of any term shall be void.

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Are to attend the master on his appointment.

By rule, Hilary, 15 Car. 2. *IT IS ORDERED*, That every attorney of this court, personally attend the master at times prefixed by him, on notice given to him thereof, to examine causes that shall be in reference before him, under forfeiture of 10s. for every such default.

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Are to file the warrants of attorney.

By rule, Trin. 35 H. 6. *set 4. IT IS ORDERED*, That in every plea or imparlance entered by any attorney of the court, that the said attorney put in his warrant the same term, under pain of being fined and imprisoned at the discretion of the court, and of being struck off the roll.

By rule, Hil. 15 Car. 2. *IT IS ORDERED*, That every attorney of this court do file his warrant of attorney of the term wherein any exigent is awarded, demurrer or issue joined, or judgment entered, or which of them shall first happen, upon pain of forty shillings for every time he offends, and be attainted by due examination made by the justices of this court, such warrant to be filed upon or before the essoign day of every *Trinity* term, and within the space of one and twenty days next after the end of every other term.

By rule, Hil. 2 & 3 Jac. 2. *IT IS ORDERED*, That every plaintiff's attorney who shall prosecute any cause to issue, shall, on the delivery of the copy of such issue, receive of the defendant's attorney the fee for filing his warrant therein, and in case the defendant's attorney refuses to pay the plaintiff's attorney for the same, the plaintiff's attorney shall sign judgment the same as if the defendant's attorney had refused to pay for the copy of the issue or entry of his plea, which the plaintiff's attorney shall file, as well the defendant's as plaintiff's warrant of attorney before his

Are

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Are not to suffer others to practise in their names.

By rule, Mich. 1654, *sect.* 1. **IT IS ORDERED**, That no person practise in another's name, nor that any attorney knowingly permit another to practise in his name, on pain of being struck off the roll.

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his making up his record therein.

By rule, Mich. 5 Geo. 2. **IT IS ORDERED**, That no judgment whatever (except final judgments on *posseas* and writs of *inquiry*, and *non pros's*, shall be signed by any of the prothonotaries of the court, unless the stamp of the clerk of the warrants of this court be first impressed on the paper whereon such judgment is to be signed, whereby it may appear that warrants of attorney are duly filed.

Are not to suffer others to practise in their names.

By rule, Trin. 24 Eliz. **IT IS ORDERED**, That no attorney of this court shall suffer or assent to any other, not being an attorney of the court, to practise in his name, on pain of being forejudged the court, and being committed; and the party practising in the name of any such attorney contrary to this order, to be committed and fined forty shillings for every such offence.

By rule, 2 Hil. 14 Jac. 1. *sect.* 3. **IT IS ORDERED**, That no attorney shall suffer any other to use his name, or practise in his name, on pain of both parties being punished at the discretion of the court, and of being struck off the roll for ever.

By rule, Mich. 1654, *sect.* 1. **IT IS ORDERED**, That no person practise in another's name, nor that any attorney knowingly permit another to practise in his name, on pain of being struck off the roll, except in warrants of attorney for common recoveries.

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If dismissed from one court, are disabled from practising in another.

By rule, Mich. 1654, *sect. 1.* **IT IS ORDERED**, That attornies dismissed by one court from their practice for misdemeanour, be not, after certificate, admitted to practice in another court, it being contrary to the intent of the law.

A retainer of an attorney of C. B. by an attorney of this court sufficient.

By rule, Mich. 1654, **IT IS ORDERED** by the court, That a retainer of an attorney of the *Common Pleas* by an attorney of this court, and *e converso*, be a sufficient excuse to the attorney so retained, acting according to such retainer; and the attorney so retaining without a warrant from the party, to be liable to punishment.

No attorney of this court to be bail or lessee in ejectment.

By rule, Mich. 1654, **IT IS ORDERED** by the court, That for the prevention of maintenance and brocage, no attorney be lessee in an ejectment, nor bail for a defendant in this court in any action brought therein.

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By rule, Hil. 14 & 15 Car. 2. it is forbidden by the justices of this court, upon pain of expulsion from this court, that no attorney of this court permit any one to practise in his name.

If dismissed from one court, are disabled from practising in another.

By rule, Mich. 1654, *sect. 1.* **IT IS ORDERED**, That attornies dismissed from practising by one court, be not, after certificate, admitted to practise in another court, it being contrary to the intent of the law.

A retainer of an attorney of K. B. by an attorney of this court sufficient.

The same rule *verbatim* as in K. B.

No attorney of this court to be bail or lessee in ejectment.

The same rule *verbatim* as in K. B.

Attornies

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Attornies not to bring actions till a month after their bills delivered.

By rule, 5 Ann. *IT IS ORDERED* by the court, That no attorney of this court shall bring an action on his bill of costs, till a month after he has delivered in the same, subscribed with his proper hand.

This is confirmed by statutes 2 Geo. 2. cap. 23. and 12 Geo. 2. cap. 13.

In what time an attorney, or person sued by him, must plead.

By rule, 5 & 6 Geo. 2. *IT IS ORDERED* by the court, That if a bill be filed against an attorney, and a copy thereof delivered four days *exclusive* before the end of the term, including *Sunday* as one day, the defendant must plead and demand a plea as of that term, the plaintiff having entered a rule to plead, and demanded a plea, otherwise if a bill be not filed, and a copy delivered within that time, the defendant is intitled to an *imparlance*.

Or if an attorney sues out an *attachment* of privilege, and delivers his declaration four days before the end of the term, the defendant must plead as of that term; and if he does not deliver his declaration before the *essoign* day of the subsequent term, the defendant will have an *imparlance* to the next term following.

Their privilege as to laying and altering the venue.

By rule, Mich. 10 Geo. 2. If a barrister, attorney, or officer of the

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Attornies not to bring actions till a month after their bills delivered.

By statutes 2 Geo. 2. cap. 23. and 12 Geo. 2. cap. 13.

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the court be plaintiff in any action, and the same be laid in *Middlesex*, the court will not change the *venue*; and if such privileged person be a defendant, and sued in any other county than in *Middlesex*, the court on motion will alter the *venue* to *Middlesex*, unless they sue or are sued in *autre droit*, as executors, &c. or are jointly bound with other persons who have no privilege.

Attornies not to be bail in any suit depending in this court.

By rule, Mich. 14 Geo. 2. *IT IS ORDERED* by the court, That no attorney of this or any other court shall be bail in any action or suit depending in this court.

An attorney suing out an attachment of privilege against any person, must leave a precipe with the signer of the writs.

By rule, Hil. 20 Geo. 2. *IT IS ORDERED* by the court, That from and after the last day of this term, every attorney of this court who shall sue out any attachment of privilege against any defendants, shall leave a *precipe* with the signer of the writs with the defendant's names, not exceeding four in each writ, with the agent's or attorney's name who sued out the same, and all such *precipes* shall be entered on the roll where the *precipes* of *latitats*, and all other writs issuing out of this court are entered; and that the officer who signs the writs in this court shall not sign such attachment, till a *precipe* be left with him for that purpose.

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Attornies not to be bail in any suit depending in this court.

By rule, Mich. 6 Geo. 2. *IT IS ORDERED* by the court, That from and after the last day of this term, no attorney of this or any other court, or any person practising as such, shall be bail in any suit or action depending in this court.

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The attorney in the suit only to be the attorney on the record of nisi prius.

By rule, Mich. 15 Eliz. *IT IS ORDERED*, That no attorney shall be admitted or put in to be attorney in the record of *nisi prius*, but such as are attornies in the said suit by the principal record thereof, and that no attorney of this court shall appear as attorney for the plaintiff at any *nisi prius* but out of this court only.

An attorney of record must be present on the reversal of an outlawry.

By rule, Mich. 1654, *sect. 13. IT IS ORDERED*, That he that reverses an outlawry, have an attorney of record present, who must undertake an appearance to a new original; and such attorney shall be compelled to appear, and that the defendant or his attorney give notice to the plaintiff or his attorney of such reversal the same term, or in the vacation next after it.

Attornies punishable for laying actions of trespass in foreign counties.

By rule, Mich. 1654, *sect. 8. IT IS ORDERED*, That actions on the case, trespass for goods, assault, or imprisonment, arising in any English county, be laid in their proper counties, unless they arise where justices of *nisi prius* seldom come, and because trespass, or trover for goods, battery, imprisonment, and slander, must needs be notorious, in what county they arise, the attorney knowingly laying them out of the proper

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proper county (unless in the cases before expressed, or for such other causes as shall be allowed by a judge of the court, and duly made appear to be true) be severely punished.

Attorney not entitled to the same privilege as prothonotaries clerks, nor to sue out writs of privilege, &c. after discontinuance, or being put out of the roll.

By rule, Trin. 29 Car. 2. **IT IS ORDERED**, That the clerk of the warrants, at the end of this and every other term, shall certify under his hand to the seal office of this court, the names of all those attornies that have discontinued, and that are forejudged the court, and put out of the roll, and have not filed any warrant of attorney, nor continued their names on the roll for above four terms past, and that hereupon for such persons no writ of privilege or attachment be sealed, until they shall have a certificate from the said clerk of the warrants, or have their writs by him signed, to testify that their names are upon the roll of attornies, for which no fee is to be paid.

And by the said rule **IT IS FURTHER ORDERED**, That no attorney, at any time sworn and entered on the roll, shall have his privilege as a clerk to any prothonotary of this court, but only as an attorney according to ancient custom.

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By rule, Trin. 9 Wil. 3. *IT IS ORDERED* by the court, That no attorney shall, for the future, sue forth, or cause to be sued forth, in his own name, or at his own suit, any writ of *privilege, attachment, propriam, capias*, or other such *process*, and that the green wax, or keeper of the seal of this court, or his deputy, do not hereafter seal any writ of *privilege, attachment, proprium, capias*, or other such *process*, unless the same be first stamped, or signed by the clerk of the warrants of this court, or his deputy, for which no fee is to be paid, to the intent to shew, that such person is an attorney of this court, duly entered, and continued on the said roll of attornies, and that every such writ or *process* being not stamped or signed as aforesaid, by the said clerk of the warrants, or his deputy, shall be of no force to free such person from arrest, or to require bail, or to give any privilege whatever as an attorney of this court.

Attornies not to make out process in the name of any officer of the Court.

By rule, 35 Hen. 7. *IT IS ORDERED*, That no attorney or others do make out any writ or *process* in any officers name, but that every officer shall do his business in his own name, nor transact any business in any other man's office, nor do any matter relative thereto, without leave of the Chief Justice for the time being, or of the officer in whose name he transacts such business, and which the said officer must

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allow and affirm, on pain of imprisonment, and paying a fine to the King.

Attornies not to make any alteration or amendment in any roll or writing going out of any public office.

By rule, Mich. 6 & 7 Eliz. IT IS ORDERED, That no continuance or discontinuance, no alteration or amendment be made in any roll of this court, nor yet any alteration or amendment be made in any writing going out of any office of this court by any attorney or his clerk, or any other person, but only by the officer or his clerk in whose office the same shall be made or entered, on pain of imprisonment, and further to pay a fine at the discretion of the justices.

Bills against attornies to be entered with a number-roll.

By rule, Trin. 21 Car. 2. IT IS ORDERED, That no bill shall be filed against any officer, attorney, clerk, or minister of this court, to be called in court, in order to a forejudger, until the said bill be actually entered on record, and a number-roll put on the said bill.

No forejudger to be entered against an attorney, till four or eight days after notice of the bill being filed against him, and a rule given thereon.

By rule, Hil. 11 Geo. 2. IT IS ORDERED, That after the last day of the term, where any bill is filed against an attorney,

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no *forejudger* shall be entered against him on such bill for want of appearance, if the action be in *London* or *Middlesex*, and he reside within *twenty miles* of *London*, till four days after notice in writing of filing such bill be given to him or his agent, or left at his usual place of abode, and a rule for his appearance given; and if he resides above *twenty miles* from *London*, or the action be laid in any other county than *London* or *Middlesex*, then not to be entered till eight days aforesaid, which days are to be *exclusive* of the day of notice.

By rule, Trin: 13 Geo. 2. *IT IS ORDERED* by the court, That when a bill is filed against an attorney of this court, the following notice shall be fixed up in the *Common Pleas* office:

Form of notice.

In the *Common Pleas* at *Westminster*.

A. B. _____ Plaintiff.
and
C. D. one of the attornies of the said } Defendant.
court,

Take notice, That a bill of _____ term is filed against you in the *Common Pleas* office, at the suit of the plaintiff above-named, in an action of trespass on the case on several promises (or as the case is) to the damage of _____ pounds; and unless you appear thereto within *four or eight days*, as the case requires, a *forejudger*

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That no *under-sheriff*, or *bailiff* of *sheriffs*, or *liberties*, be admitted, during such their employment, to practise as attorneys, under pain of expulsion from the employment of an attorney, and not to be re-admitted.

Attornies formerly were not to act promiscuously as clerks of the prothonotaries office.

By rule, Hilary, 8 Car. 1. **IT IS ORDERED** by the court, That all clerks of prothonotaries offices, and attornies of this court, who have heretofore promiscuously exercised the distinct professions of clerk and attorney before the last day of *Ester* term next coming, shall make election, and declare unto the prothonotary of whose office they are, whether of the said professions they intend to follow, and shall for ever waive the other, except in some particulars hereafter mentioned.

Attornies not to sue out latitats or quo minus's.

By rule, Hilary, 8 Car. 1. **IT IS ORDERED** by the court, That no officer, clerk, attorney, or attorney's clerk of this court, shall, contrary to a former order made, *Mich. 15 Eliz.* hereafter sue forth or procure, by any means, directly or indirectly, any *latitat* or *quo minus*, or shall prosecute and follow for the plaintiff, any action, bill, or suit, on any such process of *latitat* or *quo minus*, on pain, for the first offence, to be suspended and punished; and for the second offence, to be expelled the court.

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Attornies not to bring suits in any other court.

By rule, Mich. 6 & 7 Eliz. *IT IS ORDERED* by the court, That every attorney of this court shall satisfy himself with the suits in the same, and forbear to be towards any cause as plaintiffs, directly or indirectly, in any other than the Queen's Majesty's court here at *Westminster*, and the pursuit of process, and writs returnable here, on pain, for doing the contrary, to be expelled out of the attornies roll of this court; and further, to make fine at the discretion of the justices.

Attornies to pay for their entries before the end of the next term.

By rule Mich. 6 & 7 Eliz. *IT IS ORDERED* by the court, That all such clerks and attornies that now be, or hereafter shall be, shall come and pay to every of the said prothonotaries for entering all his and their clients matters in every of their offices forthwith, as heretofore they have done; and if any part thereof shall happen to be unpaid in the term wherein his clients matters shall be entered, then the same attorney shall pay the same before the last day of the term next after the term wherein the matter shall be entered, and the same attorney, on complaint to the court of his default, and his name given to the clerks of the warrants by the order of the court, to be put out of the roll of attornies, and no longer to execute the office of an attorney in this court. **AND FURTHER-
MORE,**

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MORE, That none of the said prothonotaries do permit and suffer any of the said attornies to be indebted unto him for any of the causes aforesaid, by any longer time than is above limited, without complaint to this court, to be made as above-said, on pain of amerciamento, or fine for every attorney so suffered by him to be indebted, to be assessed and employed at the discretion of the said justices.

By rule, Hilary, 8 Car. 1. IT IS ORDERED, That the attornies of this court shall from henceforth duly repair unto the prothonotaries office, there to demand and take copies of declarations, issues, and other pleadings; and that no clerk of the said office shall be compelled to deliver any declaration, or other copy, or to shew any deed or writing in *curia prolat.* elsewhere than in the said office: and if any attorney shall refuse to take or pay for the said copies, then on complaint and proof thereof made to this court, to pay forthwith to the clerk double his fees, or to be put out of the roll of attornies, and not to be re-admitted without fine, at the discretion of the justices of this court paying also the said double fees, according to *Mich. 6 & 7 Eliz.*

Attornies to be reduced to a competent number in each court.

By rule, 15 Eliz. IT IS ORDERED, That all such attornies as have been absent, and not given their due attendance here, according to their oath, or that have not been towards any cause

or

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Common Pleas.

or matter in this court for the space of two years last past, shall be put out of the roll; and the like order to be here kept after.

By rule, 14 Jac. 1. IT IS ORDERED by the court, That the number of attornies of each court be received, and to have them drawn to a competent number in each court, and the superfluous number to be removed, wherein respect is to be had, that the most unfit and unskilful persons be removed.

B A I L *Common.*

King's Bench.

In what time common bail was formerly to be filed.

BY rule, Mich. 16 Car. 2. *IT*
IS ORDERED by the
court, That every attorney of
this court, who shall appear for
any defendant in any action in
which special bail is not required,
shall file *common bail* for such de-
fendant, within six days next after
the end of the same term of which
he appeared.

By statutes 5 & 12 Geo. 2. where the defendant is served with a *process*, he is to file *common bail* in *eight days* after the return, or the plaintiff may do it for him.

If bail filed by the plaintiff for the defendant, according to the statute, how to be marked.

By rule, Mich. 10 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this term, in all cases where *common bail* shall be filed by the plaintiff for

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for the defendant, by virtue of the aforefaid acts, these words shall be written on the bail piece, viz. (*filed according to the statute*), or words to the like effect.

Fees to be taken for filing common bail.

By rule, Trin. 4 W. & M. *IT IS ORDERED* by the court, That after the end of this present term, every clerk and attorney of this court, who shall be an attorney for the defendant, shall pay to the plaintiff's attorney, on joining of every issue, 1 s. 6 d. for common bail, unless the said attorney for the defendant shall make it appear to the plaintiff's attorney, that common or special bail is filed.

Common bail to be filed on judgments acknowledged by warrant of attorney.

By rule, Hilary, 1 W. & M. *IT IS ORDERED* by the court, That for every judgment acknowledged by warrant of attorney, bail shall be filed for the defendant to warrant such judgment; or in default thereof, the attorney who ought to file the said bail, shall forfeit and pay to the court box 10 s. for every such bail not filed; and for every other common bail which ought to be filed, and is not filed, the attorney for the defendant shall forfeit and pay to the box of the court 10 s. and the same respective attornies shall be punished as to the court shall seem meet.

Common Pleas.

*King's Bench.**Common Pleas.*

Common bail to be filed on judgments by confession or default.

By rule, Trin. 4 W. & M. *IT IS ORDERED* by the court, That all clerks and attornies for the plaintiff, on signing of judgment by default, or on *non sum informatus*, shall pay to the secondary of this court 1 s. 6 d. for the common bail, unless it was before filed; and the said 1 s. 6 d. shall be allowed the plaintiff in his costs.

Common bail to be filed by the defendant's attorney in ejectment.

By rule, Mich. 33 Car. 2. *IT IS ORDERED* by the court, That the rule of this court formerly made for filing bail be observed, on penalty of the forfeitures in the said rule mentioned.

AND IT IS FURTHER ORDERED, That all attornies of this court, who shall deliver, or cause to be delivered, any declaration in a plea of trespass and ejectment; to any tenant in possession of any lands or tenements, shall sue out a writ of *latitat* against the casual ejector, and file common bail for him before they shall sign judgment against the casual ejector in any such action.

Attornies formerly were obliged to deliver to the secondary of this court a note of appearances made to them, that it might be seen if common bails were filed thereon.

By rule, Easter, 1657, *IT IS ORDERED* by the court, That all clerks of the office, filacers, and attornies at large, do, within
ten

King's Bench.

en days after the end of every term, deliver to the *secondary* a note of all such appearances as have been made unto them the term before, and by whom they were so made, that he that is appointed to enter the *bails* may see whether bails be filed for every such appearance or not.

SPECIAL Bail.

Where bail is required, and where not.

B^y rule, Mich. 1654, *IT IS ORDERED* by the court, That in all causes of removal, be it by *habeas corpus*, writ of *privilege*, or *certiorari*, *special bail* ought to be given.

No *bail* in covenant, because the damages are uncertain, till declaration, and then *bail* at discretion.

In battery, conspiracy, false imprisonment, no special bail of course, without special motion and order.

In *slander*, no *special bail* except in *slander* of title wherein the same is to be left to the discretion of the judge.

In *privilege* (other than for fees or disbursements in court as an attorney of the court) *bail* at discretion of the court in such case, where in a suit by a common person, *special bail* is not requisite.

By rule, Mich. 15 Car. 2. IT
S ORDERED by the court,
That no attorney presume, at his
 peril, to make out, or cause to
 be made out, any precept or writ
 with a clause of *ac etiam &c.*
 against any *heir, executor, or ad-
 ministrator,*

Common Pleas.

SPECIAL Bail.

Where bail is required, and where not.

BY rule, Hilary, 8 Geo. 2. ***IT***
IS ORDERED by the court,
That from and after the last day
of this term, in all cases where a
prisoner in the *Fleet*, or other *gaol*,
or *prison*, is discharged, or order-
ed to be discharged by this court,
or any of the judges thereof by *sup-
perfedas* for want of prosecution,
and such prisoner be afterwards
arrested, or detained in custody
by action of debt brought on the
judgment obtained in the cause
wherein such prisoner was so dis-
charged, or ordered to be dis-
charged, that a *common appearance*
shall be accepted for the defend-
ant in such action of *debt* on judg-
ment.

By rule, Mich. 1654, sect. 12.
IT IS ORDERED by the court,
That if the defendant appear on
the summons, attachment, or dis-
tress, or by supersedeas quia impro-
vide, or doth truly render him-
self on the exigent, no bail requi-
rable.

That in all cases of removal, be it by *habeas corpus*, *privilege*, or *certiorari*, *special bail* ought to be given.

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ministrator, nor in any case where, by the course of the court, *special bail* is not required; and that if the defendant shall be lawfully delivered from an arrest on any process, the same defendant shall not be again arrested at the same time by virtue of any process at the suit of the same plaintiff; and if any attorney or plaintiffs shall offend in the premises, the name of such attorney so offending shall be struck out of the roll of attorneys. And further, as well the said attorney as the plaintiff in the said process named, shall be respectively punished as to the court shall seem just.

By stat. 12 Geo. 1. Where the debt is 10 l. or above, and an *affidavit* is made thereof, *special bail* must be put in.

By rule, Easter, 5 Geo. 2. **IT IS ORDERED** by the court, That in an action brought on a judgment, if the *debt* or *damages* recovered, without the costs, amount to 10 l. or upwards, the defendant may be compelled to put in *special bail*, otherwise he need not put in *bail*.

By the same rule **IT IS ORDERED**, That in an action of *covenant*, the defendant is not bound to put in *special bail*, unless the plaintiff has obtained a rule of court, or an order of a judge for that purpose, or unless the *covenant* be for payment of money.

By rule, Mich. 8 Ann, **IT IS ORDERED** by the court, That no *special bail* be required to an action brought on the *bail bond*.

By rule, Easter, 5 Geo. 2. **IT IS ORDERED** by the court, That if an action wherein *special bail* is required, be brought against
husband

Common Pleas.

That in causes where the defendant comes in by *cepi corpus*, be it *debt*, *detinue*, *trespass* for goods, action on the *case* (except *slander*) if the debt or damages amount to 20 l. *special bail* is to be given, except it be against an *heir*, *executor*, or *administrator*.

In *battery*, *conspiracy*, or *false imprisonment*, no *special bail* of course, without special motion and order.

In *slander*, no *special bail*, except in *slander* of title, which is to be left to the discretion of the judges.

That in *privilege*, other than for *fees* and *disbursements*, as an attorney in this court, *bail* at discretion of the court in such case, wherein a suit by a *common person* *special bail* is not required.

By rule, Hilary, 14 Jac. 1. **IT IS ORDERED** by the court, That no *bail* be offered to be put in by any attorney for any party against whom no process is sued out, or *original* brought, but the party must be present, and the assent of the court thereunto had.

By stat. 12 Geo. 1. Where the debt is 10 l. or above, and an *affidavit* is made thereof, *special bail* must be put in.

By rule, Mich. 1654, sect. 12. **IT IS ORDERED** by the court, That there be no *special bail* in an action of *covenant* till declaration, and then at the discretion of the judge.

King's Bench.

husband and wife, and the husband only is arrested, he shall put in *special bail* for his wife as well as himself.

Common Pleas.

By rule, Mich. 1649, and Mich. 1654, *sect. 11 & 12. IT IS ORDERED* by the court, That the plaintiffs, or their attornies in such causes hereafter to be removed, do duly enter their *caveats* for good bail, with all the justices of this court, according to the *ancient* course thereof, and that the attorney for the defendant which shall remove any such cause, shall give notice unto the plaintiff, or his attorney, in the inferior court of the same time when the bail shall be put in, and of the names of the said bail, and where they live, and shall make *affidavit* of such notice; and if the plaintiff, or his attorney, after such notice, will not attend to take *exception* to the bail at the time of taking thereof, nor within *fourteen days* after that, then the said bail shall be forthwith filed by the attorney who sues forth the writ, on pain to be put out of the roll of attornies of this court; and if the plaintiff or his attorney shall, within *fourteen days*, take *exception* to the bail, then such plaintiff, or his attorney that takes the *exception*, shall give notice thereof unto the defendant or his attorney, and make *affidavit* of such notice within *fourteen days* after the bail taken.

By rule, Trin. 24 Eliz. *IT IS ORDERED* by the court, That no attorney shall sue forth any *superfedeas* on any *copias* to be awarded out of this court, after the said

King's Bench.

Common Pleas.

said *capias* is delivered to the attorney of the plaintiff, unless such attorney that shall sue forth any such *supersedeas* do cause bail to be first put in for the defendant, to answer and satisfy the plaintiff as aforesaid.

By rule, Mich. 1654, *sect. 11.* *IT IS ORDERED* by the court, That if *bail* be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*.

By rule, Hilary, 8 Geo. 2. *IT IS ORDERED* by the court, That *bails* may be taken (in the absence of the *filacer*) on stamped parchment, on bringing a true abstract of the writ.

Bail in London and Middlesex, or any other county, when to be put in.

By rule, Mich. 8 Ann. *IT IS ORDERED* by the court, That where any defendant shall be arrested by the sheriff of *London* or *Middlesex*, by process issuing out of this court, and shall give to such sheriff a *bail bond* for their appearance, on the day of the return of such process, such defendant shall have leave for *four days* after that return to put in good bail at the suit of the plaintiff in such process, and within that time, all proceedings on the bail bond to the sheriff shall stay; and in case of an arrest of any defendant in any other county of this kingdom, by process issuing out of this court as aforesaid, such defendant shall have leave for *six days* to put in good bail, after the return

Bail in London and Middlesex, or any other county, when to be put in.

Note, Writs in this court are returnable *three days* sooner than in *K. B.* viz. on the *essoign day* of the term, and the same time is allowed for putting in bail in *London* and *Middlesex*, or any other county, as in *K. B.* only, the time is *inclusive* of the day of the return of the writ.

Note,

King's Bench.

return of such process, without any prosecution whatsoever to be made in the mean time on the bail bond to the sheriff.

Note, The *four* and *six* days in this court are reckoned *exclusive* of the day of the return of the writ; and if either the *fourth* or *sixth* day fall on a *Sunday*, the defendant has all day on *Monday* to put in bail.

Notice to be given on putting in bail.

By rule, Mich. 16 Car. 2. *IT IS ORDERED* by the court, That every attorney of this court, who shall put in any special bail before any justice of this court *de bene esse* on a *cepe corpus*, shall give notice thereof without delay to the plaintiff or his attorney; and if the plaintiff or his attorney shall not except to the bail for their sufficiency, within *twenty* days next after notice thereof given to him or his attorney, then on affidavit in writing of such notice on the back of the said bail piece (without fee) that bail shall be filed by the defendant's attorney within *four* days next after the end of the aforesaid *twenty* days.

Bail by commissioners in the country, how to be taken.

By rule, Trin. 8 W. 3. *IT IS ORDERED* by the court, That the *bail piece* taken before commissioners in the country, shall be fairly drawn and engrossed on parchment in the following form:

Middlesex,

Common Pleas.

Note, The same practice as in K. B.

Bail by commissioners in the country, how to be taken.

By rule, 10 March, 1692, 5 W. & M. *IT IS ORDERED* by the court, That before any bail be taken by virtue of *Stat. 4 W. & M. c. 4.* a true copy of the writ on parchment, to which the defendant is to put in bail, shall be brought to the commissioners before whom such bail is to be taken,

King's Bench.

Middlesex, to wit, A. B. of E^c. grocer, is delivered to bail on an arrest to

C. D. of E^c. Gent.
and

E. F. of E^c. Esq;

C. B. attorney for }
the defendant. }

At the suit of R. R.

TAKEN and acknowledged this — day of —, 1774. before J. K. one of the commissioners E^c.

In taking these recognizances of bail, words to this effect must be used by the person who takes the bail.

“ You (calling the bail by their names) do jointly and severally undertake, that if the defendant (calling him by name) shall be condemned in this action at the suit of the plaintiff (using his name) he shall satisfy the condemnation money and costs, or render himself into the custody of the marshal of the Marshalsea of the court of K. B. or you will do it for him.”

It is by the same rule FURTHER ORDERED, That the affidavit for the due taking of every such bail shall be made either before some judge of the K. B. to whom the bail piece shall be transmitted, or before some person who shall have power to take the affidavits in matters and causes depending in the said court.

When

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taken, and thereupon the recognizance or bail piece shall be fairly drawn and engrossed on the said parchment copy, in the following form :

THE BAIL.

J. K. of E^c. linen-draper.
and

T. R. of E^c. goldsmith.

R. R. attorney for }
the defendant. }

The defendant in 100 l.

Each of the bail in 50 l.

TAKEN and acknowledged this — day of —, 1774. conditionally before K. R. one of the commissioners E^c.

Note, If the defendant be not present, then the bail are usually bound in double the sum in the writ, otherwise their obligation is single.

The condition of the recognizance.

“ You (naming the defendant, if present) do acknowledge to owe to the plaintiff 100 l. and you (naming the bail) do severally acknowledge to owe to the same person the sum of 50 l. a piece, to be levied on your several goods and chattels, lands and tenements, on condition that if the defendant be condemned in this action, he shall pay the condemnation money, or render himself a prisoner to the Fleet for the same; and if he fail so to do, you do undertake to do the same for him.

It is by the same rule FURTHER ORDERED, That the affidavit of the due taking of every such bail shall be made either before some judge of this court, to whom the bail piece shall be transmitted

transmitted

King's Bench.

Common Pleas.

When to be transmitted.

By the foregoing rule **IT IS FURTHER ORDERED**, That all bail taken by any commissioner within the distance of *forty miles* from the cities of *London* and *Westminster*, shall be transmitted to the *Chief Justice* of this court, or to one of the judges, within *eight days* after the taking thereof; and all bails taken by any commissioner above the distance of *forty miles* from the said cities, shall be transmitted within *fifteen days* after the taking thereof, *unless* all the said judges shall be on the *circuit*, and then as soon as any one shall return to his chambers in one of the *Serjeants Inns*.

Exception to bail when to be made in a town cause.

By rule, Mich. 8 Ann. **IT IS ORDERED** by the court, That no exception to *special bail*, put in before any justice of this court, shall be made for the future after *twenty days* notice given of such bail being put in, according to the practice of this court, and that exception after that time made, shall be void, and of no force.

Note, The rule Mich. 16 Car. 2. is to the above purport.

When and how to be made in a country cause.

By rule, 8 Wil. 3. **IT IS ORDERED** by the court, That the plaintiff's

transmitted, or before some person who shall have power to take affidavits in matters and causes depending in this court.

When to be transmitted.

By the foregoing rule, **IT IS FURTHER ORDERED** by the court, That all bails taken by any commissioner within the distance of *forty miles* from the cities of *London* and *Westminster*, shall be transmitted to the *Chief Justice*, or one of the judges of this court, within *ten days* after the taking thereof; and all bails taken by any commissioners above the distance of *forty miles* from the said cities, shall be transmitted within *twenty days* after the taking, *unless* all the judges shall be on their *circuits*, and then as soon as any one shall return to *London*.

Exception to bail when to be made in a town cause.

The same practice as in *K. B.*

When and how to be made in a country cause.

By rule, 5 W. & M. The same practice is directed as in *K. B.*

King's Bench.

plaintiff's attorney shall be at liberty to repair to the commissioner's book for the names of the bail, to the end that they may enquire of the sufficiency of them; and if they are not found sufficient, they may *except* against them within *twenty days* after the said *bail* is transmitted, and notice given to the plaintiff or his attorney of the taking thereof; and in that case the defendant must either put in *better bail*, or the *cognizors* of such *bails* must justify themselves in open court, either by *affidavit* taken before such commissioners that took the said bails, or by oath made in court, or before one of the judges of the said court.

When and how to justify on exception in a town cause.

By rule, Easter, 5 Geo. 2. *IT IS ORDERED* by the court, That in every action in this court, where *special bail* is put in, and an *exception* entered against the *bail*, and notice of such *exception* is given in writing to the defendant's attorney, the defendant shall procure his said *bail* to justify, if the notice be given in *term* time, in *four days* after such notice, or shall add other bail, who shall justify within the said *four days*; but if such *exception* be entered in *vacation* time, and notice thereof be given in like manner, the *bail* put in, or other *additional bail*, shall justify on the *first* day of the *subsequent term*.

What the bail are liable to pay on judgment for the plaintiff.

By the foregoing rule, *IT IS ORDERED* by the court, That
2 where

When and how to justify on exception in a town cause.

By rule, Trin. 3 & 4 Geo. 2. The same time is allowed for justifying bail as in *K. B.*

King's Bench.

where the plaintiff declares or recovers a greater sum than is expressed in the process on which he declares the *bail* shall not be discharged, but be liable for so much as is sworn to, and indorsed on the said process, or for any lesser sum, which the plaintiff in such action shall recover, any rule of this court to the contrary notwithstanding.

Exception to bail, where to be entered.

By rule, Mich. 8 Ann. *IT IS ORDERED* by the court, That exception taken to *bail*, on all process issuing out of this court, except by *original*, be made in the judge's *bail book* at his chambers, and that notice thereof be given to the plaintiff's attorney.

Exception to bail by original, where to be entered.

By rule, Easter, 2 Geo. 2. *IT IS ORDERED* by the court, That in all causes prosecuted by *original writ*, where *special bail* may be put in, if the plaintiff will except against such *bail*, the exception thereto shall be entered in the *filacer's book*, and notice thereof, without delay, given to the defendant's attorney, as is required in causes brought by bill.

Bail when and how to be filed.

By rule, Trin. 13 Car. 2. *IT IS ORDERED* by the court, That every attorney of this court, who shall put in any *bail* by recognizance before the *Chief Justice*, or any of the other judges of this court, and the plaintiff or his attorney shall accept of such

H 2

bail,

Common Pleas.

Exception to bail where to be entered.

The same practice as in K. B.

Bail when and how to be filed.

The same practice as in K. B.

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bail, that then the attorney who puts in such *bail*, shall cause that *bail* to be filed within *twenty days* after such acceptance, under the penalty of *forty shillings*; and that all *bails* taken *de bene esse*, and which are accepted by the plaintiff's attorney, and now remaining with any judge of this court, shall likewise be filed within *twenty days* now next following, on the like penalty of *forty shillings*.

By rule, Easter, 5 Geo. 2. *IT IS ORDERED* by the court, That every *bail* taken on or before the *continuance* day is a *bail*, and to be filed of the *preceeding term*, and every *bail* taken after the *continuance* day is a *bail*, and to be filed of the *subsequent term*; but where new *bail* is added to other *bail* taken, or before the *continuance* day, in such case the new *bail* shall be taken and filed as of that *term* in which the *first bail* were put in. *Vide rule Easter, 11 Will. 3.*

To whom the fees for filing special bail are to be paid.

By rule, Easter, 29 Car. 2. *IT IS ORDERED* by the court, That every attorney of this court, who puts in any *special bail* before any judge of the court, at the time of putting in the same, shall deposit in the hands of the judges clerk, before whom such *bail* shall be so put in, the fee due for filing that *bail*, that is to say, for every *bail* on a writ of *habeas corpus* *four shillings and tenpence*, and for every *bail* on a writ of *caapi corpus* *two shillings and sixpence*; and the judges clerks in whose

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where the plaintiff declares or returns a greater sum than is specified in the process or which he declares the defendant not to be discharged, but he shall not be much as is sworn to, and not to be on the said process, or for any other term, which the plaintiff in such action shall recover, and the of this court to the contrary notwithstanding.

By rule, Easter, 5 Geo. 2. *IT IS ORDERED* by the court, That every exception taken to any writ or process issuing out of this court may be original, or made return judge's bail sent at his chambers, and that notice thereof be given to the plaintiff's attorney, and that the plaintiff's attorney be answerable to the court for the same.

By rule, Easter, 29 Car. 2. *IT IS ORDERED* by the court, That in all cases brought by original writ, where special bail may be put in, if the plaintiff will except against such bail, the return thereto shall be entered in the court's book, and notice thereof without delay given to the defendant's attorney, who is to be answerable in cases brought by bill.

By rule, Easter, 29 Car. 2. *IT IS ORDERED* by the court, That every attorney of this court who shall put in any bail by return, or any of the other judges of this court, and the plaintiff or his attorney shall answer of such

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whose hands that fee shall be so left, shall, within *six days* next after the end of each term, give a note in writing to the *secondary* of this court of all *bails* of the *vacation* and *term* foregoing so put in, together with the names of the *attornies* who put in those *bails*, and pay the said *secondary* the fee *aforesaid*, received by them for such *bails*, in manner *aforesaid*.

Bail cannot give evidence in the cause in which they are bail, without leave of court.

By rule, Easter, 5 Geo. 2. *IT IS ORDERED* by the court, That a person who becomes *bail* in a cause, shall not be a witness in such suit, without leave of court obtained on motion for that purpose, and putting in and justifying a *good bail* in his stead.

How the plaintiff in an action may discharge the bail.

By rule, Easter, 5 Geo. 2. If an action by *original* be sued out in one county, and the declaration be laid in another, though the same be good as against the defendant, yet the *bail* by such *procedure* of the plaintiffs are discharged, and not liable to a *scire facias*.

Bail cannot give evidence in the cause in which they are bail, without leave of court.

The same practice as in *K. B.*

How the plaintiff in an action may discharge the bail.

The same practice as in *K. B.*

BAIL IN ERROR.

King's Bench.

To be put in before allowance of writ.

The same practice as in C. B.

When to be put in &c.

The same practice as in C. B.

Common Pleas.

To be put in before allowance of writ.

By rule, Mich. 12 Geo. 1. IT IS ORDERED by the court, That before any allowance of any writ of error, or reversing any outlawry, be had by plea or otherwise, through or by want of any proclamation, to be had or made according to the form of the statute in that case made and provided, after the first day of November, in this present term, the defendant and defendants in the original action shall put in bail, not only to appear and answer to the plaintiff in the former suit in a new action, to be commenced by the said plaintiff for the cause mentioned in the first action, but also to satisfy the condemnation, if the plaintiff shall begin his suit before the end of two terms, next after the allowing the writ of error, or otherwise avoiding of the said outlawry.

When to be put in &c.

By rule, Mich. 28 Car. 2. IT IS ORDERED by the court, That all writs of error shall, without delay, be delivered to the clerk of the errors for the time being, and that no person shall be hindered from suing out execution, under pretence of any writ of error, before such writ of error be

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be delivered to the clerk of the errors, and in cases where *special bail* is required, *unless* the plaintiff in such writ of error shall, within *four days* after the delivery thereof, put in *bail* according to law, and obtain a writ of *superfedeas* thereon, the defendant may proceed to execution notwithstanding such writ of error.

And by the same rule, *IT IS FURTHER ORDERED*, That after the writ of error, in due manner to be allowed, and a *superfedeas* thereon obtained, no execution shall be had for not transcribing the record into the *K. B.* without certificate in writing from the clerk of the errors, that the plaintiff in such writ of error makes default in transcribing the record unto the *K. B.* according to a rule of court before of course given.

Notice of bail being put in, must be given the defendant in error.

By rule, Mich. 5 W. & M. *IT IS ORDERED* by the court, That every attorney of this court, who hath sued out any writ of error, to reverse any judgement obtained in this court, in which *special bail* ought to be put in, after the putting in of such *special bail*, shall give notice thereof without delay to the defendant in the writ of error, or to his attorney, and that if the aforesaid defendant shall not *except* to the said bail for *insufficiency* thereof, within *twenty days* next after notice thereof given to him or his attorney, then such *recognizance of bail* shall be allowed.

When

Notice of bail being put in, must be given the defendant in error.

The same practice as in *K. B.*

When

King's Bench.

When bail in error are to perfect.

Note, The exception against the bail in error should be entered in the clerk of the errors book, and notice given to the plaintiff in error, and also a rule for better bail had of the clerk of the errors, and if the bail do not justify, or better bail be put in in four days after notice of the rule, the plaintiff in the original action may take out execution, but the writ of error remains still, and the plaintiff in error may proceed thereon.

Common Pleas.

When bail in error are to perfect.

By rule, Mich. 6 Geo. 2. **IT IS ORDERED** by the court, That in all cases where bail shall be filed on writs of error, such bail shall likewise be perfected within four days after exception taken thereto; or, in default thereof, the clerk of the errors of this court shall nonpross such writs of error.

BAIL ON HABEAS CORPUS.

King's Bench.

Special bail in all cases of removal.

BY Rule, Mich. 1654, sect. 9. **IT IS ORDERED** by the court, that in all causes of removal, be it by *habeas corpus*, writ of privilege, or *certiorari*, special bail ought to be given.

That on a cause removed by *habeas corpus* out of the courts of Canterbury, Southampton, Hull, Litchfield, or Pool, which are counties where the judges of *nisi prius* seldom come, if the action be transitory, it must be laid in the county of Kent, Southampton, York, Stafford, or Dorset, where the town and county lies.

Bail on habeas corpus, when and how to be taken.

By the foregoing rule, sect. 8. **IT IS ORDERED**, That writs of *habeas corpus*, directed to the inferior courts of London, Westminster, Southwark,

Common Pleas.

Special bail in all cases of removal.

BY rules, Mich. 1654, sect. 12, and Mich. 1649, reg. 2. The same practice as in K. B.

Bail on habeas corpus, when and how to be taken.

By rule, Mich. 1649, **IT IS ORDERED** by the court, That the plaintiffs, or their attorneys, in such causes hereafter to be removed,

King's Bench.

Southwark, and other courts within *five miles of London*, may be returnable *immediately*; and if the defendant intends to be *bailed*, then on or within *four days* after allowance of the writ notice is to be given in writing of the names and addition of the *bail*, the time when, and the judge before whom the same is intended to be put in to the plaintiff or his attorney, or him that caused the plaint to be entered; or if none can be found, then notice of the premises to be left in writing with the chief clerk of the inferior court, or his deputy, by the party that tenders the *bail*, or his attorney, and oath made thereof, otherwise the *bail* are not to be taken, and a *procedendo* granted, if desired, before *bail* accepted.

That if no *bail* in such cases be put in within *eight days* after the *habeas corpus* is allowed in these courts, when the same is returnable *immediately*, a *procedendo* may be granted by any judge of the court, if desired, before *bail* taken.

And if *bail* be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*; and if no exception be taken within *twenty days* after notice given to the plaintiff, or his attorney, of the names of the *bail* and before whom taken, then on oath made of such notice, the *bail* to be delivered out to be filed.

That if *bail* on a *habeas corpus* be taken before a judge at his chambers, and not *excepted* against, if not filed within *four days* after the *twenty days*, a *procedendo* may be granted on certificate that it is not filed.

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moved; do daily enter their *caveats* for good *bail* with all the justices of this court, according to *ancient practice*; and that the attorney for the defendant which shall remove any such cause shall give notice unto the plaintiff or his attorney in the *inferior court*, of the same time when the *bail* shall be put in, and of the names of the said *bail*, and where they live, and shall make *affidavit* of such notice; and if the plaintiff or his attorney, after such notice, shall not attend to take *exception* to the *bail* at the time of the taking thereof, nor within *fourteen days* after that, then the said *bail* shall be forthwith filed by the attorney who sues out the writ, on pain to be put out of the roll of attornies of this court; and if the plaintiff or his attorney shall, within *fourteen days*, take *exception* to the *bail*, then such plaintiff or his attorney that takes the *exception*, shall give notice thereof unto the defendant or his attorney, and make *affidavit* of such notice within *fourteen days* after the *bail* taken.

And it is *FURTHER ORDERED*, That the attorney that sues forth the *habeas corpus* for such commitment, shall duly file the same in the *prothonotaries* office, that it may be recorded as it ought to be, on pain to be put out of the roll as aforesaid; and that every writ whereon any *bail* is taken in court, shall be made returnable at a day certain, and the *bail* thereon shall be put in on the return of the writ, and not before nor after.

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King's Bench.

When and how to be put in.

By rule, Mich. 1654, *IT IS ORDERED* by the court, That from henceforth no *bail* shall be tendered or put in on any *habeas corpus*, until the *habeas corpus*, and the causes for which *bail* is to be put in, be returned, to the end it may appear what the causes are for which the defendant is detained, and *bails* may be duly taken, and the *habeas corpora* and *bails* duly filed.

By rule, Easter, 29 Car. 2. *IT IS ORDERED* by the court, That no *bail* shall be put in on writs of *habeas corpus* before such writ shall be returned.

By rule, Hilary. 10 W. 3. *IT IS ORDERED* by the court, That no *bail* shall be put in on any writ of *habeas corpus* before that writ is returned, and that such *bail* shall not be taken by any justice of this court, *unless* the writ, with the return thereof, shall be offered before the said justice, to be filed at the time of putting in thereof.

As to the return of the writ of habeas corpus, and notice of bail being put in thereon.

By rule, Mich. 1654, *sect. 8. IT IS ORDERED* by the court, That writs of *habeas corpus*, directed to the inferior courts of London, Westminster, Southwark, and other courts within five miles of London, may be returnable immediately; and if the defendant intendeth to be bailed thereon, or within four days after allowance of the writ, notice to be given in writing of the names and addition of

Common Pleas.

When and how to be put in.

By rule, Hilary, 13 & 14 Car. 2. *IT IS ORDERED* by the court, That if no *bail* be put in on writs of *habeas corpus* directed to the inferior courts of London, Westminster, Southwark, and other courts within five miles of London, returnable immediately or within eight days after the said *habeas corpus* is allowed in those courts, when such writ is returnable immediately, a *procedendo* may be granted by any judge of this court, if desired, and if the *bail* be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*.

As to the return of the writ of habeas corpus, and notice of bail being put in thereto.

By rule, Mich. 1654, *sect. 11. IT IS ORDERED* by the court, That writs of *habeas corpus*, directed to the inferior courts of London, Westminster, Southwark, and other courts within five miles of London, may be returnable immediately; and if the defendant intendeth to be bailed thereon, or within four days after the allowance of the writ, notice is to be given in writing of the names and additions

King's Bench.

of the *bail*, the time when, and the judge before whom the same is intended to be put in to the plaintiff, or his attorney, or him that caused the plaint to be entered; or if none can be found, then notice of the premises to be left in writing with the chief clerk of the inferior court, or his deputy, by the party that tenders the *bail*, or his attorney, and oath made thereof, otherwise the *bail* are not to be taken; and a *procedendo* granted, if desired, before *bail* are accepted.

Note, By rule, Mich. 16 Car. 2. The same notice of putting in *bail* on *habeas corpus* must be given the plaintiff's attorney as on a *cepi corpus* &c.

Common Pleas.

additions of the *bail*, the time when, and the judge before whom the same is intended to be put in to the plaintiff or his attorney, or him that caused the plaint to be entered; or if no one can be found, then notice of the premises to be left in writing with the chief clerk of the inferior court, or his deputy, by the party that tenders the *bail*, or his attorney, and oath made thereof, otherwise the *bail* are not to be taken, and a *procedendo* to be granted, if desired, before *bail* are accepted.

By rule, Hilary, 13 & 14 Car. 2. IT IS ORDERED by the court, That writs of *habeas corpus* directed to the inferior courts of London, Westminster, Southwark, and other courts within five miles of London, may be returnable immediately; and if the defendant intendeth to be bailed, then on or within four days after allowance, of the writ, the day of which allowance being indorsed by such officer as allows the same; on the back of the said writ notice is to be given in writing of the names and additions of the *bail*, the time when, and the judge before whom the same is intended to be put in to the plaintiff or his attorney, or him that caused the plaint to be entered; or if none can be found, then notice of the premises to be left in writing with the chief clerk of the interior court, or his deputy, by the party that tenders the *bail*, or his attorney, and oath made thereof, otherwise the *bail* are not to be taken, and a *procedendo* granted, if desired, before *bail* accepted.

King's Bench.

Exception to bail on a habeas corpus, when to be made.

By rule, Mich. 16 Car. 2. *IT IS ORDERED* by the court, That on a writ of *habeas corpus* brought, if the plaintiff shall not except to the bail put in thereon for insufficiency thereof, within twenty-eight days after the putting in of the same, then that *bail* shall be filed by the defendant's attorney.

In what time the habeas corpus is to be filed.

By rule, Mich. 16 Car. 2. *IT IS ORDERED* by the court, That every attorney of this court who shall put in any *special bail* before any justice of this court, *de bene esse*, on a writ of *habeas corpus*, if the plaintiff shall not except to that *bail* for insufficiency thereof within twenty-eight days after the putting in thereof, then that *bail* shall be filed by the defendant's attorney within four days next after the end of the twenty-eight days, under the penalty, that every attorney making default, either in not giving notice as aforesaid, or in not filing the several *bails* as aforesaid, or either of them in form aforesaid, shall forfeit and pay to the box of the court for his first default five *shillings*, and for his second default shall be struck off the roll of attorneys of the said court.

Common Pleas.

Exception to bail on a habeas corpus, when to be made.

By rule, Mich. 1654, *sect. 11. IT IS ORDERED* by the court, That if no exception be taken within twenty days after notice given to the plaintiff or his attorney of the names of the *bail*, and before whom taken, then on oath made of such notice, the *bail* to be delivered out to be filed.

By rule, Hilary, 13 & 14 Car. 2. *IT IS ORDERED* by the court, That if no exception be taken within twenty days after the *bail* taken, notice having been given as aforesaid, then the *bail* to be delivered out to be filed.

In what time the habeas corpus is to be filed.

By rule, Mich. 1654, *sect. 11. IT IS ORDERED* by the court, That if *bail* be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*; and if no exception be taken within twenty days after notice to the plaintiff or his attorney of the names of the *bail*, and before whom taken, then on oath made of such notice, the *bail* to be delivered out to be filed.

By rule, Hilary, 13 & 14 Car. 2. *IT IS ORDERED* by the court, That if *bail* be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*; and if no exception be taken within twenty days after the *bail* taken, notice having been given as aforesaid, then the *bail* is to be delivered out to be filed.

King's Bench.

Fees to be taken by the judge's clerk on filing the habeas corpus.

By rule, Easter, 29 Car. 2. **IT IS ORDERED** by the court, That every attorney of this court who puts in any *special bail* before any justice of this court, at the time of putting in thereof, shall deposit in the hands of the justice's clerk before whom such *bail* shall be so put in, the fee due for filing that *bail*, that is to say, for every *bail* on a writ of *habeas corpus* 4s. 10d. and for every *bail* on a writ of *cepi corpus* 2s. 6d. and the judges clerks in whose hands that fee shall be so left, shall within *six days* next after the end of every term, give a notice in writing to the *secondary* of this court of all *bails* of the *vacation* and *term* preceding so put in together with the names of the attorneys who put in those *bails*, and pay the said *secondary* the fee aforesaid received by them for the *bails* in manner aforesaid.

When a procedendo may issue, if bail is not put in after the habeas corpus is allowed.

By rule, Mich. 1654, *sect.* 8. **IT IS ORDERED** by the court, That if no *bail* be put in within *eight days* after the *habeas corpus* is allowed, when the writ is directed to the inferior courts of London, Westminster, Southwark, and other courts within *five miles* of London, and the process is made returnable *immediately*, a *procedendo* may be granted by any judge of the court, if desired, before the *bail* is taken.

When

Common Pleas.

Fees to be taken by the judge's clerk on filing the habeas corpus.

By rule, Hilary, 13th & 14 Car. 2. **IT IS ORDERED** by the court, That on *bail* taken of persons in custody, the judge's clerk is to deliver the *bail* to the *prothonotary* to be filed, if assented to; and to that end the *prothonotary's* fees are to be deposited.

Note; Rule, Mich. 1654, sect. 11. is to the same effect.

When a procedendo may issue, if bail is not put in after the habeas corpus is allowed.

By rule, Mich. 1654, *sect.* 11. **IT IS ORDERED** by the court, That if no *bail* be put in within *eight days* after the *habeas corpus* is allowed, when the writ is directed to the inferior courts of London, Westminster, Southwark, and other courts within *five miles* of London, and the process is made returnable *immediately*, a *procedendo* may be granted by any judge of this court, if desired, before *bail* taken.

When

King's Bench.

When a procedendo may issue after exception taken to bail on a habeas corpus.

By rules, Mich. 1654, *sect.* 8. Hilary, 10 W. 3. and Mich. 16 Car. 2. After the plaintiff's attorney has *excepted* to the bail put in by the defendant's attorney, to the writ of *habeas corpus* brought, the plaintiff's attorney may have a rule for a *procedendo* in four days, unless better bail, either in term or vacation.

Bail on habeas corpus, what they are liable for.

By rule, Hilary, 2 Jac. 2. *IT IS ORDERED* by the court, That the bail on a writ of *habeas corpus*, are liable to all actions mentioned in the return of such writ, on which the plaintiff or plaintiffs shall declare within two terms.

Common Pleas.

When a procedendo may issue after exception taken to bail on a habeas corpus.

By rules, Mich. 1654, *sect.* 10 & 11. Hilary 13 & 14 Car. 2. The same practice as in K. B.

Bail on habeas corpus, what they are liable for.

By rule, Mich. 1654, *sect.* 12. *IT IS ORDERED* by the court, That in case of a removal of a cause out of an inferior court on reversal, the new original is to agree in the nature of the action, the sum in demand, and the county, otherwise the bail are not liable; but if the party will voluntarily appear to such varying original, the same to be good as to the party; but if on a cause removed by *habeas corpus* out of the courts of Canterbury, Southampton, Hull, Litchfield, or Pool, which are counties where the judges of *nisi prius* seldom come; if the action be *transitory*, it must be laid in the county of Kent, Southampton, York, Stafford, or Dorset, where the town and county lies, and the recognizance of bail must be taken accordingly.

BAIL BOND.

King's Bench.

In what penalty such bond is to be made.

BY rules, Mich. 8 Ann, *IT IS ORDERED* by the court, That where any defendant shall be arrested by the sheriffs of *London* or *Middlesex*, by process issuing out of this court, and shall give to such sheriff a *bail bond* for his appearance at the return of the writ, the same shall be in double the sum sworn to, and indorsed on the process, and such defendant shall have leave for *four days* after that return to put in *good bail* at the suit of the plaintiff in such process, and within that time all proceedings on the *bail bond* to the sheriff shall be stayed.

In what time an action may be brought on the bail bond.

By rule, Mich. 8 Ann, *IT IS ORDERED* by the court, That where any defendant shall be arrested by the sheriff of *London* or *Middlesex*, by process issuing out of this court, and shall give to such sheriff a *bail bond* for their appearance on the return of the process, such defendant shall have *four days* after the return to put in *good bail*, and within that time all proceedings on the *bail bond* to the sheriff shall be stayed; and if arrested in any other county, the defendant shall have *six days*, and in the mean time all process on the *bail bond* shall be stayed.

Common Pleas.

In what penalty such bond is to be made.

The same practice as in C. B.

In what time an action may be brought on the bail bond.

By rule, Hilary, 9 Ann, *IT IS ORDERED* by the court, That no *bail bond* taken in *London* or *Middlesex*, by virtue of any process issuing out of this court shall be put in suit, till *four days exclusive* of the appearance day, and that no *bail bond* taken in any other *city* or *county* by process from this court, shall be put in suit till *eight days exclusive* after the appearance day.

King's Bench.

On what terms the court will stay proceedings on the bail bond.

By rule, Mich. 8 Ann, The court on motion will stay the proceedings on the bail bond, on putting in good bail, paying the costs, receiving a declaration in the original action pleading to issue, and taking short notice of trial, so that the issue may be tried the same term.

If the plaintiff has lost a trial, the court will further require that the bail consent that judgment be entered against them on the bail bond for the plaintiff's security; but if the plaintiff might have had judgment in the original action, had bail been put in in due time, the court will not then stay the proceedings on the bail bond.

Bail on the writ of audita querela.

By rule, Trin. 9 Jac. 1. IT IS ORDERED by the court, That no writ of *audita querela* for any cause whatsoever be allowed, nor bail taken thereupon, unless in open court, and by special motion first made, and a rule thereupon drawn up.

Common Pleas.

On what terms the court will stay proceedings on the bail bond.

The same practice as in K. B.

BAILIFFS.

King's Bench.

Not to practise as attornies.

By rule, Mich. 1654, sect. 1. IT IS ORDERED by the court, That no under sheriff, or bailiff of sheriffs, or liberties, be admitted during such their employment to practise as attornies, under

Common Pleas.

Not to practise as attornies:

By rule, Mich. 1654, sect. 1. IT IS ORDERED by the court, That no under sheriff, or bailiff of sheriffs, or liberties, be admitted during such their employment to practise as attornies, under

King's Bench.

under pain of expulsion from the employment of an attorney, and not to be re-admitted.

For neglect in the due execution of their office, how to be punished.

By rule, Mich. 1654, sect. 2. the same order *verbatim* as in C. B.

Not to take warrants of attorney from prisoners in custody, but in the presence of an attorney.

By rule, Easter, 15 Car. 2. **IT IS ORDERED** by the court, That no bailiff, nor sheriffs officer, shall presume to exact or take from any person being in his custody by arrest, any warrant to acknowledge a judgment, but in the presence of an attorney for the defendant; which attorney shall then subscribe his name thereto; which said war-

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under pain of expulsion from their employment of an attorney, and not to be re-admitted.

For neglect in the due execution of their office, how to be punished.

By rule, Mich. 1654, sect. 2. **IT IS ORDERED** by the court, That for the prevention and remedy of delays and abuses in sheriffs, under sheriffs, bailiffs of liberties, and their deputies, and other bailiffs of sheriffs &c. in the execution of process and writs, that if it shall appear that any such officer shall wilfully delay the execution or return of any process, or shall take or require any undue fees for the same, or shall give notice to the defendant, thereby to frustrate the execution of any process or writ, or having levied money, shall detain it in their hands after the time of the return of their writs, besides the ordinary course of amerciaments (the contempt or misdemeanor appearing) an attachment, information, commitment, or fine, as the case may be, shall issue against him.

Not to take warrants of attorney from prisoners in custody, but in the presence of an attorney.

By rule, Hilary, 14 & 15 Car. 2. **IT IS ORDERED** by the court, That no bailiff, nor sheriffs officer, shall presume to exact or take from any person, being in his custody by arrest, any warrant to acknowledge a judgment, but in the presence of an attorney for the defendant; which attorney shall then subscribe his name thereto; which said warrant shall

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King's Bench:

rant shall be produced when the said judgment shall be acknowledged; and if any bailiff or sheriffs officer shall hereafter offend, or do contrarywise, he shall be severely punished for so doing.

And it is FURTHER ORDERED, That no attorney shall enter, or cause to be acknowledged or entered, any judgment, by colour of any warrant gotten from any defendant being under an arrest, otherwise than as aforesaid.

Common Pleas.

be produced when the said judgment shall be acknowledged; and if any bailiff, or sheriffs officer shall hereafter offend, or do contrarywise, he shall be severely punished for so doing.

And it is FURTHER ORDERED, That no attorney shall enter, or cause to be acknowledged, or entered, any judgment, by colour of any warrant gotten from any defendant, being under an arrest, otherwise than as aforesaid.

Not to discharge persons taken on a capias utlegatum without a superseas.

By rule, Hilary, 14 & 15 Car. 2. IT IS ORDERED by the court, That no sheriff, under sheriff, sheriff's clerk, deputy, or bailiff, nor any steward bailiff of a franchise, coroner, or their clerks or deputies, shall set at liberty any person taken on any writ of *capias utlegatum*, nor discharge the lands or goods of any person outlawed, by them seized on any writs of *capias utlegatum*, without a lawful writ of *superseas*, under the seal of this court to them delivered for such discharge, according to a late act of parliament in the thirteenth year of his Majesty's reign, in that behalf made and provided.

B A R O N A N D F E M E.

King's Bench.

How to conduct themselves on an arrest.

BY rule, Trin. 2 Geo. 1. **IT IS ORDERED** by the court, That if a writ be sued out against the husband and wife, and the wife only be arrested and detained in custody, she shall not be compelled to put in bail for her husband, but may file common bail for herself, and have a *superfedeas* for her discharge; but if the husband only be arrested, he shall put in bail for his wife as well as himself.

By rule, Easter, 5 Geo. 2. **IT IS ORDERED** by the court, That if an action wherein special bail is required be brought against the husband and wife, and the husband only is arrested, he shall put in special bail for his wife as well as himself.

C A P I A S A D S A T I S F A C I E N D U M.

King's Bench.

How to be returned by bill and by original.

BY rule, Easter, 5 Geo. 2. **IT IS ORDERED** by the court, That on an action brought by bill, there be *eight days* between the *teste* and the return of the *ca. sa.* against the prisoner; and in order to charge the *bail*, it must lie *four days*, exclusive in the sheriff's office.

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Common Pleas.

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King's Bench.

If the action be brought by *original*, the want of *fifteen days* between the *teste* and return of a *ca. sa.* against the principal, in order to charge the *bail*, is not helped by *stat. 13 Car. 2. cap. 2.*

If judgment be given with a stay of execution till a future day, the plaintiff may sue out a *ca. sa.* before the day, in order to make out a *testatum ca. sa.* against the defendant, but not to warrant a *scire facias* against the bail.

Common Pleas.

CARTS AND DRAYS.

King's Bench.

When to pass through King's-street, Westminster, in term time.

BY rule, Hilary, 3 & 4 Car. 2. **IT IS ORDERED** by the court, That no carts or drays do pass in *King's-street, Westminster, in term time*, between the hours of eight and two o'clock.

Common Pleas.

CERTIORARI.

King's Bench.

How to be sued out in this court.

BY rule, Easter, 11 Car. 1. **IT IS ORDERED** by the court, That no writ of *certiorari*, on any writ of *error*, shall be sued out, or made by any clerk or attorney of the court, after a writ of *certiorari* in the same cause hath been already sued out and returned, without motion in court by council.

Common Pleas.

How to be sued out in this court.

The same practice as in *K. B.*

King's Bench.

Common Pleas.

To whom to be delivered before they are broken open.

By rule, Trin. 24 Eliz. **IT IS ORDERED** by the court, That all writs of *error* and of *certiorari*, directed to the *Chief Justice* of this court for the time being, shall be first delivered to him before they be broken open, or else no record of this court shall be removed or certified thereby.

When directed to the bishop's court of Ely, how to be marked.

By rule, Easter, 13 Will. 3. **IT IS ORDERED**, That every writ of *certiorari* issuing out of this court, and for the future directed to the court of *Pleas* of the *bishop of Ely* before it be sealed by one of the justices of this court shall be marked with the words *Isle of Ely* on the back of the writ, under the name of the justice aforesaid; and if any writ of *certiorari* shall issue without such indorsement, superscribed by the proper hand writing of the same justice, it shall not be allowed by the judge of the court of *Ely* aforesaid.

C O S T S.

King's Bench.

Common Pleas.

To be paid by the plaintiff to the defendant, unless notice of trial be countermanded in time.

By rule, Mich. 4 Ann, **IT IS ORDERED** by the court, That if the plaintiff does not proceed to trial, or countermand in time,

To be paid by the plaintiff to the defendant, unless notice of trial be countermanded in time.

By rule, Mich. 1654, sect. 1. **IT IS ORDERED** by the court, That in case the plaintiff gives the defendant notice of trial, and

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time, the defendant, on affidavit of attendance and necessary expenses, shall have his costs to be taxed by the Secondary.

To be paid by the plaintiff to the defendant, for not executing his writ of inquiry, according to notice, or countermanding the same in time.

By rule, Mich. 8 Geo. 1. *IT IS ORDERED* by the court, That the plaintiff shall pay to the defendant costs for not executing a writ of inquiry, according to notice, in like manner as for not going to trial.

The sheriff to return process in six days after being served with a rule, or liable to pay costs.

N. B. In this court the sheriff is ruled to return process, and attached on neglect or refusal.

The

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and does not proceed thereon, the defendant, on motion, is to have his costs of his former attendance, to be taxed by a Prothonotary, unless the plaintiff gives the defendant warning in convenient time, that he would not proceed, or shew cause to be allowed by the court in excuse for such costs.

By rule, Mich. 3 Geo. 2. *IT IS ORDERED* by the court, That no countermand of trial at the assizes shall be good, unless notice be given *two days* before the commission day.

N. B. No countermand to be given on a *Sunday*.

To be paid by the plaintiff to the defendant, for not executing his writ of inquiry according to notice, or countermanding the same in time.

By rule, Trin. 13 Geo. 2. *IT IS ORDERED* by the court, That from and after the last day of term, where notice is given of the execution of a writ of inquiry, and not countermanded in time, the defendant shall be entitled to costs from the plaintiff for not executing such writ of inquiry in the same manner as a defendant by the course of the court is now entitled to costs from a plaintiff, who does not proceed to the trial of an issue joined after notice thereof given.

The sheriff to return process in six days after being served with a rule, or liable to pay costs.

By rule, Hil. 8 Geo. 1. *IT IS ORDERED* by the court, That from and after the last day of this present

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Common Pleas.

present *Hilary* term, if any sheriff, under sheriff, or any of the officers, or persons above named, or any officer, or person having the return of any process issuing out of his court, or of any precept or warrant thereupon, shall neglect or refuse to return the same, within *six days* next after service of a rule of this court for that purpose, such sheriffs, under sheriffs, and every other of the above named officers or persons, shall be liable to pay the costs occasioned by such neglect, to be taxed, any rule or order of this court to the contrary notwithstanding.

The costs below, on causes removed into this court, to be considered, and cast into the judgment.

By rule, Mich. 1654, *sect.* 22. **IT IS ORDERED** by the court, That on causes removed by *habeas corpus* out of an inferior court having jurisdiction of the cause, if the judgment be given for the plaintiff, the costs below to be considered, and cast into the judgment, if for the defendant, the charges of putting in bail.

The costs of the exigent and fine to be paid before the reversal of the outlawry.

The same practice as in *C. B.* in reversing an outlawry.

The costs below, on causes removed into this court, to be considered, and cast into the judgment.

By rule, Mich. 1654, *sect.* 25. **IT IS ORDERED** by the court, That causes removed by *habeas corpus* out of an inferior court, having jurisdiction of the cause, if the judgment be given for the plaintiff, the costs below to be considered, and cast into the judgment, if for the defendant, the charge of putting in bail.

The costs of the exigent and fine to be paid before the reversal of the outlawry.

By rule, Mich. 17 Car. 2. **IT IS ORDERED** by the court, That on every writ of *exigent*, which shall be sued forth of this court, from and after this term, if a *superfedeas* be not put in thereto at or before the return thereof, that no *superfedeas* shall, by any sheriff, or other officer, be allowed

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lowed as an appearance to any such writ of *exigent*, until the defendant shall have paid unto the plaintiff or his attorney, or left in the court with one of the Prothonotaries thereof, the full and just costs of suit, as he shall have been at in the suing forth of such writ of *exigent*, to be taxed by the said Prothonotary.

And that on reversal of all and every *outlawry*, the party defendant which reverses the same, shall, before the reversal thereof, on any *superfedeas* made thereunto, give *special bail*, if the sum of money, or damages expressed in the original writ, whereupon the *exigent* was awarded, shall amount to the sum of 20*l.* and the plaintiff or plaintiffs shall require the same, and pay to the plaintiff or plaintiffs, or his or their attorney, or leave it in court for him or them, his or their full and just costs of suit expended in the prosecution of the same to be taxed as aforesaid.

By rule, Trin. 33 Car. 2. *IT IS ORDERED* by the court, That no defendant, who in or after the month of St. *Michael* next coming shall be *outlawed*, and who shall appear and reverse the *outlawry*, shall, on such reversal, pay for costs to the plaintiff any sum of money not exceeding the usual cost of the *exigent* in this court, together with the fine to our Lord the King on the *original* writ, if any was paid; and that all further costs shall be respited until the time of signing judgment for the plaintiff.

AND IT IS FURTHER ORDERED, That every defendant so *outlawed*, and reversing such *outlawry*,

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outlawry, if the plaintiff shall not proceed thereupon, within *two terms* next after notice of the reversal thereof, the defendants shall have costs, to be taxed by the *Prothonotary*.

By rule, Trin. 2 Jac. 2. *IT IS ORDERED*, That no *outlawry* for the future, after the death of the plaintiff in the action be reversed, without the defendant's appearance, and putting in special *bail* (if the action so requires) to the executor or administrator of the plaintiff, or to the husband and wife, in case where the wife, whilst a *feme sole*, sued the defendant to an *outlawry* before the marriage.

PROVIDED that the plaintiff's attorney to the writ of *exigent* or *capias utlegatum* do, within *fourteen days* after notice to him given of the defendant's intention to reverse such *outlawry*, deliver the name or names of the executor or administrator of such plaintiff or plaintiffs deceased, to the proper *Prothonotary* of this court.

AND IT IS FURTHER ORDERED, That on every writ of *exigent*, which shall be sued forth of this court from and after this term, if a *supersedeas* be not put in thereto, at or before the day of appearance thereof, that no *supersedeas* shall, by any sheriff, be allowed to any such writ, until the defendant shall have paid unto the plaintiff, or his attorney, or left in the court with one of the *Prothonotaries* thereof, the full and just costs of suit therein.

That on reversing all and every *outlawry*, the party defendant which reverses the same, shall, before the reversal thereof, or any *supersedeas* made thereto, give



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special *bail*, if the sum of money, or damages expressed in the original, whereon the *exigent* was awarded, shall amount to the sum of 10 *l.* or upwards, and pay to the plaintiff; or his attorney, or leave in the court for him or them the full and just costs of suit to the *exigent* aforesaid.

And where the plaintiff, by virtue of such *outlawry*, hath taken an inquisition, and extended into the King's hands, the goods, chattels, lands, and tenements of the *outlawed* person, and returned the same into the *Exchequer*, such further just and reasonable costs shall then be taxed by the *Prothonotary*, and likewise paid to the plaintiff, or his attorney, or left in court for him or them, as the plaintiff has been at in taking and prosecuting the said inquisition, before any certificate of such reversal shall be made by the clerk of the *outlawries* in that behalf.

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In declarations, the repetitions of the original writ is to be avoided, and only the nature of the action to be repeated.

B*Y* rule, Mich. 1654, *sect.* 12. **IT IS ORDERED** by the court, That declarations in actions of trespass on the *case*, or *personal actions* on any general statute, namely, *Hue and cry*, *Monopolies*, or for a suit in the *Admiralty*, and such like, other than *debt*, repeat not the original writ but only the nature

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In declarations, the repetitions of the original writ is to be avoided, and only the nature of the action to be repeated.

B*Y* rule, Mich. 1654, *sect.* 16. **IT IS ORDERED** by the court, That declarations in actions of trespass on the *case*, or *personal actions* on any general statute, namely, *Hue and cry*, *Monopolies*, and for suits in the *Admiralty*, and such like, other than *debt*, repeat not the original writ but only the nature

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nature of the action, viz. *C. B.* was attached to answer *C. D.* in a plea of *trespass* on the case, or in a plea of *trespass* and *contempt* against the form of the statute.

Seet. 13. In actions of *covenant*, no more of the deed is necessary to be set forth in the declaration than is necessary for the assignment of the breach.

In actions of *slander*, long preambles are to be avoided, and no more inducement is to be inserted in the declaration than what is necessary for the purpose of maintaining the action, unless the matter requires a *special inducement* or *colloquium*.

In actions on *general statutes*, the declaration is not to repeat the statute, but to conclude against the form of the statute in such case made and provided, as in case of *debt* on statute 2 *Edw. 6.* for *tithes*, and 32 *Hen. 8.* for *maintenance*, and 21 *Jac.* of *monopolies*.

In actions of *debt*, on a judgment had in the courts at Westminster, the declaration is to recite only the judgment, but if brought on a judgment had by or against an *executor* or *administrator*, then the action of *debt* is to repeat the declaration and judgment in the first action.

When the declaration may be amended.

By rule, Mich. 1654, *seet. 13.*
IT IS ORDERED by the court,
 That the plaintiff may amend his declaration, paying *costs* or giving an *imparlance* at the plaintiff's election by order of the court or a judge, after the declaration is entered, if the amendment be but a small matter, and so that it does not deface the roll.

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nature of the action, viz. *A. B.* was attached to answer *C. D.* in a plea of *trespass* on the case, or in a plea of *trespass* and *contempt* against the form of the statute.

Seet. 17. In actions of *covenant*, no more of the deed is necessary to be set forth in the declaration than is necessary for the assignment of the breach.

In actions of *slander*, long preambles are to be avoided, and no more inducement is to be inserted in the declaration than what is necessary for the purpose of maintaining the action, unless the matter requires a *special inducement* or *colloquium*.

In actions on *general statutes*, the declaration is not to repeat the statute in such case made and provided, as in case of *debt* on statute 2 *Edw. 6.* for *tithes*, 32 *Hen. 8.* for *maintenance*, and 21 *Jac.* of *monopolies*.

In actions of *debt*, on a judgment had in the courts of Westminster, the declaration is to recite only the judgment, but if brought on a judgment had by or against an *executor* or *administrator*, then the action of *debt* is to repeat the declaration and judgment in the first action.

When the declaration may be amended.

By rule, Mich. 1654, *seet. 17.*
IT IS ORDERED by the court,
 That before the declaration is actually entered, the plaintiff may amend his declaration, paying *costs* or giving an *imparlance* at the plaintiff's election by order of court or a judge by the *Prothonotary*, but after it is entered, if the amendment is but a small matter, that does

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*King's Bench.**How to be delivered to the defendant's attorney.*

By rule, Trin. 12 Will. 3. *IT IS ORDERED* by the court, That from and after the first day of *Michaelmas* term, on the appearance of any attorney or person for any defendant in this court, the plaintiff's attorney shall not be bound to deliver to the defendant's attorney the original declaration, but instead thereof shall deliver a true copy of such declaration, and that on the delivery or tender thereof, the defendant's attorney, or other person acting for him, shall pay unto the plaintiff's attorney, or other person acting for him, for the copy of such declaration, after the rate of 4 *d.* per sheet *copywise*, together with the *stamps* or *King's duty* thereon, which shall serve and be in lieu of the copy of such declaration usually made by the defendant's attorney; and if any attorney or other person shall refuse to pay for the copy of any declaration, so as aforesaid tendered, the plaintiff's attorney shall and may leave the copy of such declaration in the office with the clerk that keeps the files of declarations of this court, who shall receive the same without fee or reward, and thereon the plaintiff's attorney, giving rules to plead, may, for want of a plea, sign judgment, and before any plea shall be received, the defendant's

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does not deface the *roll*, yet before *issue* or *demurrer* entered, it may be amended by rule of court, on payment of *costs*, and liberty given to the defendant to plead with a new or further *imparlance*.

How to be delivered to the defendant's attorney.

The same practice as in *K. B.*

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dant's attorney shall pay for the copy of such declaration and the stamps as aforesaid.

By rule, Trin. 2 Geo. 2. IT IS ORDERED by the court, That in every cause in which *special* or *common* bail shall be filed, and notice thereof given to the attorney for the plaintiff, a copy of the declaration shall be delivered to the defendant's attorney, who shall pay for the same according to the usual rate, but if the attorney for the defendant, or his clerk in his absence, refuses to pay for such copy, or if it shall happen that the abode of the defendant's be unknown to the plaintiff's attorney, then it shall be lawful to leave such copy with the officer of this court, appointed for filing declarations, and notice thereof shall without delay be given to such defendant or his attorney, and such declaration shall be held well delivered from the time of such notice only.

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How to be delivered on special writs.

By rule, Hilary, 9 Ann. IT IS ORDERED by the court, That all declarations hereafter to be delivered or left in the office on special writs in the same term, the said writs shall be returnable, and shall be delivered or left in the office at least *four days* before the end of every term, *exclusive* of the day of the delivery thereof, or of the leaving the same in the office, any practice heretofore to the contrary thereof notwithstanding.

Before what time to be delivered.

By rule, Easter, 10 Geo. 2. IT IS ORDERED by the court, That from henceforth all declarati-
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ons and pleadings shall be delivered, all such demands made, and all notices given, before nine of the clock in the evening.

How to be demanded by the defendant's attorney.

By rule, Mich. 1 Geo. 2. *IT IS ORDERED* by the court, That all declarations, pleas, replications, and other pleadings; And also oyer of writs, bonds, and other deeds, shall be demanded by a note in writing.

In ejectments, how to be signed before they are delivered.

By rule, Hilary, 2 Geo. 2. *IT IS ORDERED* by the court, That from and after the first day of February, in this present term, no declaration or declarations in ejectment shall be taken or received by any of the Secondaries of this court, unless such declaration or declarations be signed by some Sergeant at law, and delivered by himself to one of the Secondaries in open court.

AND IT IS FURTHER ORDERED, That the Secondaries shall in the morning next after the end of every term, and at all other times when required, produce and shew to any person or persons, who shall demand the same, their alphabetical paper of ejectments, moved or delivered into court in each term, in manner aforesaid.

How to be delivered on process, returnable the first and second return of any term.

By rule, Trin. 5 & 6 Geo. 1. *IT IS ORDERED* by the court, That

How to be delivered on process, returnable the first or second of any return.

By rule, Easter, 8 Geo. 2. *IT IS ORDERED* by the court, That

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That on all procefs to be fued out of this court, returnable the *first* or *second* return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within *twenty miles* of *London*, the declaration shall be delivered, with notice to plead, within *four days* after the delivery thereof, and the defendant shall plead within the same *four days*, without any *imparlance*; and in case the plaintiff declares in any other county, or the defendant lives above *twenty miles* from *London*, the declaration shall be delivered, with notice to plead, within *eight days* after the delivery thereof, and the defendant shall plead within the said *eight days*, without any *imparlance*; and on default of pleading as aforesaid, the plaintiff may sign his judgment, any rule of this court to the contrary notwithstanding.

How to be delivered where the plaintiff's attorney files common bail for the defendant.

By rule, Trin. 1 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this present term, in all causes where a copy of the procefs of this court is served on any defendant or defendants, and an *imparlance* entered, or *common bail* filed for such defendant or defendants by the plaintiff's attorney, pursuant to the said act, the plaintiff's attorney in such case shall leave a copy of the declaration in the office, with the proper officer appointed for that purpose, and likewise give notice thereof to the defendant or defendants, by delivering an *English* notice, written in

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That all declarations in *London* or *Middlesex*, delivered pursuant to the rule of this court, made the last *Michaelmas* term, on procefs, returnable the *first* or *second* return of any term where the defendant lives within *twenty miles* of *London*, shall be delivered with notice, that the defendant or defendants plead to such action within *four days* after such declaration delivered; and that all declarations where the plaintiff declares in any other county, or the defendant lives above *twenty miles* from *London*, shall be delivered, with notice to plead within *eight days* after such declaration delivered.

How to be delivered where the plaintiff's attorney appears for the defendant.

By rule, Mich. 1 Geo. 2. The same practice as in K. B.

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Secretary hand, to such defendant or defendants, or by leaving the same at the last or most usual place of abode of such defendant or defendants, in which notice shall be likewise expressed the nature of the action, and at whose suit prosecuted, and the time limited by the rules of this court for such defendant or defendants to plead to such action, and in case such defendant or defendants do not plead to such declaration by such limited time, so to be expressed in such notice, judgment will be entered against such defendant or defendants by default; and from the time of giving such notice as aforesaid, such declaration shall be deemed well delivered to such defendant or defendants, and not otherwise.

AND in case such defendant or defendants (after such notice given) do not plead by the time the rules for pleading are out, the plaintiff in such case may sign his judgment without any other or further calling for a plea, and thereon give notice of executing his writ of inquiry, either by delivering a notice in writing to such defendant or defendants, by leaving the same at the last or most usual place of abode of such defendant or defendants, which shall be a sufficient notice to such defendant or defendants of the time of executing such writ of inquiry.

When to be delivered de bene esse.

By rule, Mich. 10 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this term, on all process to be issued out of this court, returnable the first or second return of any term where

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When to be delivered de bene esse.

The same practice as in K. B. mutatis mutandis.

How

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where no *affidavit* shall be made or filed of the cause of action, pursuant to the late *act of parliament for preventing frivolous and vexatious arrests*, the plaintiff may deliver the *declaration de bene esse*, at the return of such process, with notice to plead in *eight days* after the delivery thereof, and if the defendant doth not file *common bail*, and plead within the said *eight days*, the plaintiff having filed *common bail* for such defendant, according to the said *act*, may sign judgment for want of a plea, a rule to plead being duly entered.

AND IT IS FURTHER ORDERED, That from and after the last day of this term, on all process to be issued and made returnable aforesaid, where an *affidavit* shall be made and filed of the cause of action, pursuant to the said *act*, the *declaration* may be delivered *de bene esse*, at the return of such process, with notice to plead in *four days* after such delivery, if the action be laid in *London* or *Middlesex*, and the defendant lives within *twenty miles* of *London*.

How the four and eight days to plead are to be reckoned in this court.

By rule, Mich. 10 Geo. 2. **IT IS ORDERED** by the court, That the *four* and *eight days* to plead to declarations delivered in this court, be reckoned *exclusive* of the day of delivery.

How to deliver declarations by the bye.

By rule, Mich. 10 Geo. 2. **IT IS ORDERED** by the court, That the plaintiff in such action

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shall be made and filed of the cause of action, pursuant to the said *act*, the *declaration* may be delivered *de bene esse*, at the return of such process, with notice to plead in *four days* after such delivery, if the action be laid in *London* or *Middlesex*, and the defendant lives within *twenty miles* of *London*.

AND IT IS FURTHER ORDERED, That from and after the last day of this term, on all process to be issued and made returnable aforesaid, where an *affidavit* shall be made and filed of the cause of action, pursuant to the said *act*, the *declaration* may be delivered *de bene esse*, at the return of such process, with notice to plead in *four days* after such delivery, if the action be laid in *London* or *Middlesex*, and the defendant lives within *twenty miles* of *London*.

How the four and eight days to plead are to be reckoned in this court.

The same practice as in *K. B.* only the *four* and *eight days* to plead are reckoned *inclusive* of the day of delivery.

How to deliver declarations by the bye.

The same practice as in *K. B.*

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or suit, wherein *common bail* hath been, or shall be, so filed, may deliver a *declaration* by the *bye*, against such defendant, in like manner as he might have been done by the *antient* course of this court; but that no other person, *except* such plaintiff, is or shall be capable of delivering a *declaration* by the *bye*, against any defendant by reason of *common bail* being so filed by any plaintiff in any such action or suit.

AND IT IS FURTHER ORDERED, That from and after the last day of this term, in all cases where *common bail* shall be filed by the plaintiff for the defendant, by virtue of *stat. 12 Geo. 1. cap. 29.* and *5 Geo. 2. cap. 72.* these words shall be written on the *bail piece*, viz. *Filed according to the statute*, or words to the like effect.

Declarations not to be delivered varying from the original writ.

By rule, Hilary, 9 Car. 1. **IT IS ORDERED** by the court, That no filazer, clerk, or attorney of the court, on the appearance of any defendant to any original writ, do prosecute, make, enter, or deliver any *declaration*, varying in matter from the original writ first presented, nor shall receive any such *declaration*, so varying, on his appearance on such original writ, without a special rule in open court first obtained; nor shall prosecute, make, enter, or deliver to any other filazer, clerk, or attorney of the court, appearing on any original writ, nor shall receive from any filazer, clerk, or attorney, more *declarations*

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The plaintiff's attorney delivering a declaration varying from the original, to bear the loss.

By rule, Mich. 1654, *sect. 18.* **IT IS ORDERED** by the court, That if the plaintiff's attorney or clerk, deliver a copy of a *declaration* to the defendant's attorney or clerk, materially varying from the original *declaration*, the disadvantage thereof not to be cast on the defendant, but on the plaintiff, whose attorney is paid for the same.

Decla-

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tions than one, on penalty of expulsion, and forfeiting the office of every filazer so offending, and expulsion from the court of every other clerk or attorney so offending.

Declarations delivered, unless de bene esse, before bail put in, is a waiver of bail.

By rule, Mich. 10 Geo. 2. It is the settled practice on this rule, That delivering a *declaration*, unless *de bene esse*, before bail put in, is a waiver of the bail.

When to declare to prevent a non-profs.

By the foregoing rule, It is the settled practice, That no *process* out of this court, returnable at a day certain, if the defendant appears by his attorney, and files *bail* of the term wherein the *process* is returnable, and the plaintiff doth not declare before the end of the term next following, a *non-profs* may be signed without entering any rule to declare, or calling for a *declaration*, and the defendant shall have costs, taxed as usual, by *stat. 13 Car. 2. cap. 2.* and if the *declaration* should be tendered at any time after the end of the *second term*, and before the *nonprofs* is signed, the defendant is not bound to accept it, but may sign his *nonprofs* at any time after the end of the *second term*.

If the proceedings are by *original*, the defendant must before the end of the *second term*, or within *four days* after enter a rule for the plaintiff to declare and demand a *declaration* in writing, and if the plaintiff does not declare before the

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Declarations delivered, unless de bene esse, before bail put in, is a waiver of bail.

The same practice as in *K. B.*

When to declare to prevent a non-profs.

The same practice as in *K. B.* by rule, *Hilary, 9 Ann.*

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the rule is out, the defendant may at any time before the *assign-day* or the next term sign a *nonpross*, but not afterwards.

How to deliver declarations against prisoners in custody.

By rule, Easter, 5 Will. and Mary, The same practice in delivering declarations against prisoners in custody; as in the *C. B.*

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How to deliver declarations against prisoners in custody.

By rule, Easter, 5 Will. and Mary, *IT IS ORDERED* by the court, That no copy of any declaration shall be delivered to a prisoner in custody, until after the process on which such prisoner shall be taken or charged, in custody, be returnable.

That no rule shall be given for the defendant in custody, to appear and plead to any declaration against him, until an *affidavit* be filed with the proper *secondary* of the delivery of the copy of such declaration, and the time when, and the person to whom the same copy was delivered; and a copy of the said *affidavit* shall be produced to the *prothonotary* before judgment signed, together with a certificate from the proper officer, that no appearance is entred with him.

That if a copy of the declaration be delivered before *one month of Easter* or *The morrow of All Souls*, and *affidavit* thereof made and filed, and the defendant doth not enter the appearance, with the proper officer, within *ten days* after *Easter* or *Michaelmas term*, respectively, judgment may be entered against him on the certificate as aforesaid, if rules have been given, but if he doth enter his appearance as aforesaid, before the end of *ten days* after the term, he shall *impear* until the next term, unless the action be in *Lon-*

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don or *Middlesex*, and the defendant be in prison within 40 miles of the city of *London* or *Westminster* then, though he doth not appear before the expiration of ten days after the end of the term, he shall plead two days before the *Essoign* day of the next term, and in default thereof, rules having been given, judgment may be entered against him as aforesaid.

That if a copy of the declaration be delivered on or after, one month after *Easter* in *Easter* term, or *The morrow of All Souls* in *Michaelmas* term, or in *Hilary* or *Trinity* term; and the plaintiff thereon shall give rules to appear and plead if the defendant enters his appearance two days preceeding the *Essoign* day of the next term, he shall imparle until the said next term, but if he doth not appear within that time, judgment may be entered against him as aforesaid.

That if the writ be returnable in one term, and a copy of the declaration be delivered before the *Essoign* day of the next term, the plaintiff in such next term, may give rules to appear and plead; and if the defendant doth not enter his appearance and plead, by the time that the rules are out, judgment may be entered against him as aforesaid.

That if the declaration be not entered or left in the office, before the end of the next term after the writ or process, by which the prisoner shall be taken or charged in custody, be returnable, and an *affidavit* made and filed in manner aforesaid, before the end of 20 days after such term, (*Easter* term excepted, and within

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within ten days after *Easter term*) the prisoner shall be discharged on entering of his appearance, with the proper officer by writ of *superfedeas* made by him according to the ancient practice of this court.

That if any goaler or keeper of a prison, having received a copy of a declaration against a prisoner in his custody shall suppress the same, or not deliver it forthwith to such prisoner an *attachment* shall be issued against him.

When the plaintiff may be nonsuited though no rules to plead given.

By rule, Mich. 1654, *sect. 14.* **IT IS ORDERED** by the court, That if the plaintiff doth not declare the *second term*, though the defendant gives no rules, yet a *nonsuit* may be entered at the end of the *second term*, on a *continuance* over by him entered by *dies datus*, but not on the *third term* or after.

Originals proper to the cause of action to be sued forth before the declaration delivered.

By rule, Mich. 30 Car. 2. **IT IS ORDERED** by the court, That for the future, no attorney for the plaintiff shall presume to deliver, or attorney for the defendant to receive, by himself or his agents, any declaration without an original proper to the cause of action being first sued forth, to warrant the same.

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In all suits the declaration to be entered with the prothonotary.

By rule, Mich. 14 Car. 1. IT IS ORDERED by the court, That every appearance on every writ of *capias*, *alias*, and *pluries*, issuing out of this court shall be entered of record by the proper *filazers* only, out of whose office the said writ was issued, and by none of the *Prothonotaries* or other officers of this court; and that no attorney on pain to forfeit 40 s. to the poors box for the *first* offence and expulsion from the court for the *second* offence, shall receive any declaration, or offer his appearance to any clerk or attorney of this court, on any such *mesne* process before the attorney for the defendant has entred the appearance of the defendant with the *Filacer* of the said county, out which the writ is awarded, for taking of which appearance, and entring thereof on record, the *Filacer* shall take the fee of 1 s. 4 d. and no more, whereof he shall allow 4 d. to the attorney who appears for the defendant, for bringing a copy of such writ from the sheriffs.

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Demurrer books, how to be delivered.

Demurrer books, how to be delivered.

BY rule, Trin. 12 Will. 3. IT IS ORDERED by the court, That from and after the first day of next *Michaelmas* term, on the appearance of any attorney or other person, for any defendant in

BY rule, Mich. 6 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this term, the plaintiff's attorney shall deliver all the *demurrer books* to the Lord Chief Justice

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in this court, the plaintiff's attorney shall not be bound to deliver to the defendant's attorney, the *original* declaration, but instead thereof, shall deliver a true copy of such declaration; and that on the delivery or tender thereof, the defendant's attorney or other persons acting for him, shall pay unto the plaintiff's attorney or other person acting for him, for the copy of such declaration, after the rate of *4 d. per sheet* copyways, together with the stamps or *King's duty* thereon, which shall serve and be in lieu of the copy of such declaration usually made by the defendant's attorney; and that on pleading any *general issue* or *general demurrer*, to any declaration before any *special demurrer* or *special plea* pleaded, the plaintiff's attorney shall, and may, deliver unto the defendant's attorney a copy of such issue or *demurrer* who shall pay for the same, after the rate of *4 d. per sheet* copyways, *And also* for the stamps thereof; and if any attorney or other person, shall refuse to pay for the copy of any declaration so as aforesaid tendered, the plaintiff's attorney may sign judgment, &c.

By note on rule, Trin. 1 Geo. 2.
IT IS HELD That if a paper book be made up and delivered in *term time* or within *four days exclusive*, after term, with a rule thereon given by the clerk of the papers for bringing in the same book to be enrolled, and the defendant's attorney doth not within *four days* after the delivery thereof bring back the book and join with the plaintiff in the special issue or *demurrer*, made up or
 waive

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Justice and the rest of the judges of this court; and the defendant's attorney shall pay the plaintiff's attorney for *two* of the books, *two days* at least before the day appointed for arguing such *demurrer*, and the defendant shall not be heard by council when the cause comes on to be argued, unless such payment be made as aforesaid.

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waive his special plea and give the general issue or *demurrer* to any special issue tendered, and pay for entering the pleadings on his part, judgment may be signed as if no plea had been pleaded.

Where a plea is not put in, in time, so that a *paper book* may be made and delivered in term, or within *four days* after, yet if it be made up and delivered within *eight days* after the term, the defendant's attorney shall be obliged to take it and return it within *four days*, or judgment may be signed against him.

By rule, Mich. 17 Car. 2. *IT IS ORDERED* by the court, That in all causes depending in this court, to be entered in the book of the clerk of the papers where books ought to be delivered to the *chief justice* and *senior justice*, by the plaintiff or his attorney, and to the other *justices*, by the defendant or his attorney; and if one party or his attorney, shall neglect to deliver the books in form aforesaid, then the other party or his attorney, ought to deliver such books *omitted*, at the cost of the party who shall so neglect, before any argument in that cause shall be made at the bar by council.

When a demurrer may be waived and when not.

By note on rule, Trin. 5 and 6 Geo. 2. That the defendant cannot waive the *general issue*, and instead thereof give a special plea or demurrer, nor waive a *general demurrer*, and give a *special demurrer* or *special plea*. But if a *special plea* or *special demurrer* be given

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given in, and the book is made and delivered to the defendant's attorney, he may strike out the *special plea* or *demurrer*, and return it with the *general issue* or *general demurrer*.

Special demurrers to be signed by council.

By rule, Easter 18 Car. 2. **IT IS ORDERED** by the court, That no *special pleas* or *demurrers*, in law, in any cause here in court now depending, or hereafter to be presented, shall be received by the clerks of the papers of this court, before such *pleas* or *demurrers* in law shall be signed with the proper hand of some council in that behalf retained.

Causes of demurrer, how to be assigned.

By rule, Mich. 1654, *sect.* 17. **IT IS ORDERED** by the court, That according to *stat.* 27 Eliz. on *demurrers* the causes be specially assigned, and not involved with *general un-applied expressions* of *double, negative, pregnant, uncertain, wanting form*, and the like, but to shew specially, wherein, that the other party may, (as the cause shall require), either join in *demurrer*, or amend paying costs, or discontinue his action.

That it be declared that matters of form, as well on the part of him that *demurs*, as of him that *joins* in all parts of the pleadings are discharged, unless such as are specially assigned on the *demurrer*.

Common Pleas.

King's Bench.

Common Pleas.

Demurrers when to be entered in three days after term.

By rule, Trin. 14 Car. 2. *IT IS ORDERED* by the court, That every attorney shall enter in the office of this court, all *pleas* and *demurrers* in law within *three days* after the end of every term; and that no *rule* shall be made by any justice of the court of the Lord the King, before the King himself, in any action in the said court pending, after the *third day* next after the end of any term: And that no attorney of the said court shall attend any of the said justices to make any *rules* after the *third day* next after the end of any term; and that no *rules* shall be made peremptorily to attend after the *third day* after the end of any term; and that all *rules* made after the *third day*, after the end of any term, shall be void.

D I S C O N T I N U A N C E.

King's Bench.

Common Pleas.

When the plaintiff may discontinue.

BY note on rule, Mich. 10 Geo. 2. The plaintiff in a cause in this court, may, if he sees occasion, *discontinue* either before, or after a declaration delivered, by motion at the *side bar* on payment of costs.

DISTRINGAS JURATORES.

*King's Bench.**Common Pleas.**When to issue.*

B*Y* rule, Hilary, 15 Car. 2. **IT IS ORDERED** by the court, That no writ of *alias* or *pluries distringas juratores*, with *tales* for a trial of an issue at bar, shall issue before a writ of *distringas juratores*, with a panel of the names of the jurors annexed thereto, be delivered to the *secondary* of this court, to the intent that the issues forfeited by the jurors for their non appearance on the foregoing writ, may be duly *estreated*.

When the old writs are to be delivered to the sheriff.

By rule, Easter 1651, **IT IS ORDERED** by the court, That all sheriffs do on the return of every *venire facias* cause sufficient summons to be given unto all jurymen that are by them returned on any juries for the preventing of *tales*.

AND IT IS FURTHER ORDERED, by the same rule, That all attornies do deliver unto the sheriffs of all counties of *England*, within *forty miles* of *London*, all old *distringas's* within *eight days* after the end of *Hilary* and *Trinity* term, or else none shall be received; and that all sheriffs do cause sufficient summons to be given to all jurymen in these old *distringas's* a week before the *assizes* at least.

EJECT-

E J E C T M E N T.

King's Bench.

The defendant where he does not defend the whole premises to give notice thereof to the plaintiff.

BY rule, Trin. 15 Car. 2. **IT IS ORDERED** by the court, That in every action of *trespass* and *ejectment*, when the defendant by the rule of court, shall confess *lease*, *entry*, and *ouster*, for so much of the premises in the declaration mentioned, as are in the possession of the said defendant or his under tenants, the attorney of such defendant, shall immediately deliver to the plaintiff's attorney, a certain note in writing, of the tenements so being in the possession of the said defendant or his under-tenants.

A latitat to be sued out and filed, and a rule to plead given, before judgment can be obtained against the casual ejector.

By rule, Trin. 18 Car. 2. **IT IS ORDERED** by the court, That every attorney of this court shall enter with the clerk of the rules a *general rule* to plead in every action of *trespass* and *ejectment* before any motion shall be made in court for judgment against the *casual ejector*.

By rule, Mich. 33 Car. 2. **IT IS ORDERED** by the court, That all attornies of this court who shall deliver or cause to be delivered, any declaration in a plea of *trespass* and *ejectment* to any tenant in possession of any lands

Common Pleas.

King's Bench.

lands or tenements, shall sue out a writ of *latitat* against the *casual ejector* and file *common bail* for him, before they shall sign judgment against the *casual ejector* in any such action.

When to move for Judgment.

By rule, Hilary 1649, *IT IS ORDERED* by the court, That after the ordinary rule of this court hereafter given to the defendant to plead in any action of *trespass* and *ejectment*, and the defendant does not plead to the declaration, judgment may be given and entered for the plaintiff against the defendant for want of a plea as in other actions without special motion in court by council *provided* that in this present term of *Hilary* the plaintiff shall give the defendant special notice of this general rule.

No attorney to be lessee in ejectment.

By rule, Mich. 1654, *sect. 1. IT IS ORDERED* by the court, That for the prevention of *maintenance* and *brocage*, no attorney to be lessee in an *ejectment*.

*Common Pleas.**No attorney to be lessee in ejectment.*

By rule, Mich. 1654. *sect. 1.*

The same practice as in *K. B.*

Declarations in ejectment how to be signed and delivered.

By rule, Hilary 2 Geo. 2. *IT IS ORDERED* by the court, That from and after the *first* day of *February* in this present term, no declaration or declarations in *ejectment* shall be taken in, or received, by any *secondary* of this court, unless such declaration or declarations be signed by some *serjeant at law* and delivered by himself to one of the *secondaries* in open court.

AND

King's Bench.

Common Pleas.

AND IT IS FURTHER ORDERED, That the *secondaries* shall in the morning next after the end of every term, and at all other times when required, produce and shew to any person or persons, who shall demand the same, their *alphabetical* paper of *ejectments* moved or delivered into court in each term, in manner aforesaid.

On declarations delivered in London or Middlesex the tenant to be acquainted when to appear.

By rule, Trin 32 Car. 2. **IT IS ORDERED** by the court, That plaintiffs or their attornies, or the parties which cause declarations to be delivered in a plea of *trespass* and *ejectment*, in the county of *Middlesex* and *London*, on such delivery thereof, shall tell the tenants in possession of the tenements in question respectively, that they are to appear by an attorney of this court in defence of the title thereof in the beginning of the term next after the delivery of such declaration.

AND IT IS FURTHER ORDERED, That the aforesaid plaintiffs, for the future, shall take nothing by motion made in this court for judgment against the *casual ejector* for default of appearance, unless such motion be made within *one week* next after the 1st day of *Michaelmas* term, and of every *Easter* term, and within *four days* next after the 1st day of every *Hilary* term, and of every *Trinity* term.

Writs

King's Bench.

Common Pleas.

Writs of non omittas to enter the liberty of the bishop of Ely not to be sued out without first issuing previous process, and a mandavi ballivo returned.

Trinity, 13 Geo. 2. 1739.
TAKE notice, that I Robert by Divine Permission Lord Bishop of Ely, the liberty of the bishop of Ely claim the execution of all process and return of writs, within the royal franchise of Ely, in the isle of Ely, and county of Cambridge; and I have constituted E. P. of Ely, in the said isle and county, Esq; my bailiff, to execute the said process and make returns thereof in his name; and, that in case you make out any, writs of non-omittas, directed to the sheriff of the said county, in order to enter my liberty of Ely, without first issuing previous process, to warrant the same, and a mandavi ballivo returned thereon, by the said sheriff, and filed, I will commence one or more actions against you for the same. **GIVEN** under my hand, this 28th day of June 1739.

TO Edward Ventris, Esq; }
 chief clerk of the court of }
 King's Bench.

E R R O R.

King's Bench.

A writ of error is a supersedeas as soon as allowed, if execution be not executed.

BY stat. 27 Eliz. A writ of error is a supersedeas from the time of the allowance, and is notice of itself; but if the defend-

Common Pleas.

A writ of error is a supersedeas as soon as allowed, if execution be not executed.

BY rule Trin. 28 Car. 2. **IT IS ORDERED** by the lord chief justice of this court that for the future no attorney of the said

King's Bench.

stant have notice before the allowance it is from the time of that notice a *superfedeas*, and though the allowance is a sufficient notice to *superfede* the execution yet to bring the attorney into contempt he must have had notice.

When a writ of error is no superfedeas, without bail put in thereon.

By rule, Mich. 5 Will. and Mary, **IT IS ORDERED** by the court, That every attorney of this court, who has sued out any writ of error to reverse any judgment obtained in this court in which *special bail* ought to be put in, after the putting in of such *special bail*, shall give notice thereof without delay to the defendant in the writ of error, or to his attorney; and that if the aforesaid defendant shall not except to the said bail for unsufficiency thereof within 20 days next after notice thereof given to him or his attorney, then such recognizance shall be allowed,

Common Pleas.

said court, do or shall, make out any executions on writs of error, until they have had a certificate from the clerk of the errors, that the record is not removed and a *non-pro* thereupon duly signed, and that all attorneys do forthwith bring their writs of error by them sued out to the clerk of the errors to be allowed according to the ancient practice of this court, or in default thereof, the plaintiffs attorney, in the action is, or may be at liberty to proceed to execution.

When a writ of error is no superfedeas, without bail put in thereon.

By rule, Mich. 12 Geo. 1. **IT IS ORDERED** by the court, That before any allowance of any writ of error, for reversing of any outlawry, be had by plea or otherwise, through or for want of any proclamation to be had or made, according to the form of the statute in that case made and provided after the 1st day of November in this present term, the defendant and defendants in the original action shall put in bail, not only to appear and answer to the plaintiff in the former suit in a new action, to be commenced by the said plaintiff, for the cause mentioned in the first action, but also to satisfy the condemnation if the plaintiff shall begin his suit before the end of two terms next after the allowing the writ of error, or otherwise avoiding the outlawry.

King's Bench.

Bail in error cannot surrender the plaintiff in error.

By note on rule, Mich. 5 Will. and Mary, *IT IS HELD*, That bail in error cannot surrender the plaintiff in such writ of error.

After allowance and supersedeas, no execution can issue for not transcribing, without a certificate from the clerk of the errors, that the plaintiff makes default.

The same practice as in C. B. in transcribing the writ of error into the exchequer chamber.

Common Pleas.

Bail in error cannot surrender the plaintiff in error.

The same practice as in K. B.

After allowance and supersedeas, no execution can issue for not transcribing, without a certificate from the clerk of the errors, that the plaintiff makes default.

By rule, Mich. 28 Car. 2. *IT IS ORDERED* by the court, That all writs of error shall without delay be delivered to the clerk of the errors for the time being, and that no person shall be hindred from suing out execution under pretence of any writ of error, be delivered to the clerk of the errors; and in cases where special bail is required, unless the plaintiff on such writ of error, shall, within four days after the delivery thereof, put in bail according to law, and obtain a writ of supersedeas thereupon, the defendant may proceed to execution, notwithstanding such writ of error.

AND IT IS FURTHER ORDERED, That after the writ of error in due manner to be allowed and a supersedeas thereupon obtained, no execution shall be had for not transcribing the record into the K. B. without certificate in writing by the clerk of the errors that the plaintiff in such writ of error, makes default in transcribing the record in K. B. according to a rule of court before of course given.

Manner

Manner

King's Bench.

Manner of allowing writs of error in the exchequer chamber, and putting in bail thereon.

By rule, Easter 16 Car. 2. **IT IS ORDERED** by the court, That every attorney of this court who shall prosecute any writ of error on any judgment obtained in the court of our Lord the King, before the King himself returnable in the court of *exchequer chamber*, shall allow such writs of error with the clerk of the errors of this court within *four days* next after notice given to the plaintiff's attorney of such writ of error so by him sued out; And also shall put in bail on such writ of error within *four days* next after the allowance of such writ of error; (if bail thereon ought to be acknowledged) or in default thereof execution may be taken out on such judgment, notwithstanding the writ of error sued out in form aforesaid.

By rule, Easter 36 Car. 2. **IT IS ORDERED** by the court, That all writs of error returnable before the justices of the *common bench* and the *barons of the exchequer* in the *exchequer chamber*, shall without delay be delivered to the clerk of the errors for the time being; and that no person shall be bound to forbear suing out execution on pretence of any such writ of error before the writ shall be delivered to the clerk of the errors, and in cases where *special bail* is required, unless the plaintiff on such writ of error, shall, within *four days* after the delivery thereof, put in bail according to law, the defendant may proceed

Common Pleas.

Manner of allowing writs of error in the K. B. on judgments of this court, and putting in bail thereon.

By rule Mich. 28 Car. 2. The same practice as in the *K. B.* only a writ of error on a judgment in the *C. B.* after allowance, passes into the *K. B.* where it is *affirmed* or *reversed*.

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By rule Mich. 28 Car. 2. The same practice as in the *K. B.* only a writ of error on a judgment in the *C. B.* after allowance, passes into the *K. B.* where it is *affirmed* or *reversed*.

King's Bench.

to execution notwithstanding such suit.

When notice is to be given of bail in error being put in, when to be excepted against, and when they are to justify.

By rule, Mich. 5 Will. and Mary, **IT IS ORDERED** by the court, That every attorney of this court, who has sued out any writ of error to reverse any judgment obtained in this court, in which special bail ought to be put in, after putting in of such special bail, shall give notice thereof without delay to the defendant in the writ of error, or to his attorney; and that if the aforesaid defendant, shall not except to the said bail for insufficiency thereof, within 20 days next after notice thereof given to him or his attorney, then such recognizance shall be allowed.

When the paper books on writs of error are to be delivered to the judges.

By rule, Easter 2 Jac. 2. **IT IS ORDERED** by the court, That on reading of any record here in court, on a demurrer in law, special verdict, or writ of error, and thereon a day is given to hear the council on both sides, the books shall be delivered to the justices of this court, by the attorney of both parties, by the space of four days before the day so by the court appointed; and that the exceptions which shall be insisted on, on the argument, shall be marked in the margin of those books.

When

Common Pleas.

When notice is to be given of bail in error being put in, when to be excepted against, and when they are to justify.

The same practice as in K. B.

When the paper books on writs of error are to be delivered to the judges.

The same practice as in K. B.

When

King's Bench.

When copies of the error and record are to be delivered to the judges, &c.

By rule, Easter 33 Car. 2. IT IS ORDERED by the court, That the rule made in *Michaelmas* term last, for the delivery of copies of error and record thereon, to the justices of the *common pleas* and the *barons of the exchequer* be discharged, and that for the future, no copy of error and record thereon be delivered to the said justices or barons, before the attorney for the plaintiff, on the writ of error shall give *ten days* notice, to the clerk of the errors in the *exchequer chamber*, that the error assigned in the record is to be argued before the justices and barons for both parties, and that the attorney for the plaintiff, shall deliver *four* copies to the justices of the *common pleas*, and the attorney for the defendant shall deliver *four* other copies to the *barons of the exchequer* *four days* before the hearing the cause.

If the clerk of the errors neglects his duty, who is to supply his place.

By rule, Trin 30 Car. 2. IT IS ORDERED by the court, That if the clerk of the errors appointed by the chief justice of this court shall not receive a writ of error, and do those things which appertain thereunto, as has been accustomed, then the clerk of the treasury of this court, shall do in that behalf, what the clerk of the treasury in times past, or the *aforsaid* clerk of the errors has used to do in that behalf according to law, and the course of this court.

Common Pleas.

When copies of the error and record are to be delivered to the judges, &c.

The same practice as in *K. B.*

King's Bench

Superfedeas non est ad iudicium sed ad executionem

Superfedeas non est ad iudicium sed ad executionem

Common Pleas.

No supersedeas to be entered by the clerk of the treasury, till some manifest error is notified to the justices.

By rule, Mich. 6 and 7 Eliz. **IT IS ORDERED** by the court, That the clerk of the treasury shall make no certificate or return of any writ of error to reverse or affirm any judgment given in this court on a *verdict* or *demurrer in law*, until some manifest pregnant error therein be notified by the party, or some of his counsel, that sues out the writ of error unto the justices of the bench, or to one of them at least.

By rule, Easter 23 Eliz. **IT IS ORDERED** by the court, for the avoiding of delays in execution, that the clerk of the treasury for the time being, shall not make any *supersedeas* on any writ of error to reverse or affirm any judgment given in this court, on any *verdict*, *demurrer in law*, or *confession*, until some manifest or pregnant error therein, be notified by the party, or some of his counsel, that sues the writ of error unto the justices of the bench, or to one of them at the least.

Execution non obstante brevi de errore not to be sued out, till a certificate from the clerk of the errors.

By rule, Trin. 28 Car. 1. **IT IS ORDERED** by the court, That for the future, no attorney of the court, do or shall, make out any executions *non obstante brevi de errore*.

King's Bench,

Common Pleas.

error, until they have had a certificate from the clerk of the errors, that the record is not removed, and a *non prof.* thereon duly assigned; and that all attorneys do forthwith bring their *writs of error* by them sued out to the clerk of the errors to be allowed according to the antient practice of the court, or in default thereof, the plaintiff's attorney in the action is, or may, be at liberty to proceed to execution.

By rule, Mich. 28 Car. 2. *IT IS ORDERED* by the court, That all *writs of error* shall, without delay be delivered to the clerk of the errors for the time being, and that no person shall be hindered from suing out execution, under pretence of any *writ of error* before such *writ of error* be delivered to the clerk of the errors and in cases where *special bail* is required, until the plaintiff on such *writ of error* shall within *four days* after the delivery thereof, put in bail according to law, and obtain a *writ of supersedeas* thereon, the defendant may proceed to execution, notwithstanding such *writ of error*.

AND IT IS FURTHER ORDERED, That after the *writ of error* is in due manner allowed, and a *supersedeas* thereon obtained, no execution shall be had for, nor transcribing the record into the K. B. without a certificate in writing, by the clerk of the errors, that the plaintiff in such *writ of error* makes default in transcribing the record into the K. B. according to a rule of court before of course given.

E X E C U T I O N.

*King's Bench.**Common Pleas.*

Executions to be signed by the prothonotary before they are sealed.

BY rule, Mich: 1654, *sect. 6.* **IT IS ORDERED** by the court, That all executions, and all other writs issuing out of the *prothonotary's* offices be duly signed by the respective *prothonotaries*, before the same be sealed, and that no exemplification of any common recovery, or other record, which ought to be examined and signed by the *prothonotary*, be sealed before the same be signed by the *prothonotary*, nor that any exemplification (excepting exemplifications of *finis* and *common recoveries* of the present, or next precedent term), be sealed before they be first signed and examined by the clerk of the treasury.

AND IT IS FURTHER ORDERED, That every *prothonotary's* clerk, do apply himself from henceforth to one *prothonotary's* office only, and do give his attendance, and make his entries in that *prothonotary's* office.

When execution may be taken out without a scire facias, and when with.

By note on rule, Easter 5 Geo. 2.
If no execution be sued out within a year, the judgment must be revived by *scire facias* directed into the county where the original action was brought.

If

King's Bench.

If a *fieri fac. ca. fa.* or *'elegit* be taken out within the year, and returned and awarded on the roll, the same may be continued from term to term, to the time of the execution thereof, although after the year, and be as effectual as if judgment had been revived by *scire facias*.

If the defendant in the suit, brings a *writ of error*, and delays the execution for a year, and then is *non-suited*, execution may be taken out without reviving the judgment by *scire facias*.

Common Pleas.

E X E M P L I F I C A T I O N S:

King's Bench.

Common Pleas.

To be signed by the prothonotary before they are sealed.

BY rule, Mich: 1654, *sect.* 6. *IT IS ORDERED* by the court, That no exemplifications of any common recovery or other record which ought to be examined and signed by the *prothonotary*, be sealed before the same be signed by the *prothonotary*, nor that any exemplification (excepting exemplifications of *finis* and *common recoveries* of the present, or next precedent term), be sealed before they be first signed and examined by the clerk of the treasury.

E X I G E N T.

*King's Bench.**Common Pleas.*

*Proclamations thereon to be delivered
and duly executed.*

BY rule, Mich. 1654. *sect. 9.*
IT IS ORDERED by the
court, That according to the
provision of *stat. 31 Eliz.* ALL
attornies that sue out process of
exigent be careful that writs of
proclamation be delivered and the
sheriff do take care duly to exe-
cute the same.

*After the return of the writ of ex-
igent no supersedeas until bail put
in and the costs paid.*

By rule, Mich. 17 Car. 2. **IT
IS ORDERED** by the court,
That on every writ of *exigent*
which shall be sued forth of this
court, from and after this term,
if a *supersedeas* be not put in
thereto, at or before the return
thereof, that no *supersedeas* shall by
any sheriff or other officer be
allowed as an appearance to any
such writ of *exigent*, until the de-
fendant shall have paid unto the
plaintiff or his attorney, or left
in the court with one of the *pro-
thonotaries* thereof, the full and
just costs of suit, as he shall
have been at, in the suing forth
of such writ of *exigent*, to be
taxed by the *prothonotary*.

By rule, Trin. 2 Jac. 2. **IT
IS ORDERED** by the court,
That on every writ of *exigent*
which shall be sued forth of this
court from and after this term if
a *supersedeas* be not put in there-
unto, at or before day of ap-
pearance thereof, that no *su-
persedeas* shall by any sheriff
be

King's Bench.

Common Pleas.

be allowed to any such writ until the defendant shall have paid unto the plaintiff or his attorney or left in the court with one of the *prothonotaries* thereof, the full and just costs of suit therein.

No redidit se to be returned thereon, where the defendant has not rendered himself, nor retraxit, till entered on the roll.

By rule, Easter 24 Car. 2. *IT IS ORDERED* by the court, That no under sheriff or county clerk of any county within this realm, nor any attorney or other minister of this court, shall return or cause to be returned on any writ of *exigent* issuing out of or returnable in this court, any false return of *redidit se*, where in truth the defendant has not rendered himself to the sheriff; and that no clerk, attorney, or other minister of this court, shall enter, or cause to be entered, any *retraxit* with any undersheriff, county clerk, or other minister aforesaid whatsoever, on any writ or writ of *exigent* issuing out of and returnable in this court, until the same *retraxit* be entered on the same roll on which the said *exigent* is awarded and of that term in which the same is returnable; And that no further proceedings be had in that cause after the party is *outlawed*, by filing a new original or other means, or ways whatsoever to deceive the King's Majesty of his seals, and the aforesaid officer of the *supersedeas* office of his just fees for making and signing of the writs of *supersedeas quia improvide* to such writs of *exigent*, or any other officers of their just fees.

E X I G E N T E R.

*King's Bench.**Common Pleas.*

The officer not to receive any pluries capias, in order to make an exigent or proclamation unless it be stamped by the clerk of the warrants.

BY rule Hilary 2 and 3 Jac. 2. **IT IS ORDERED** by the court, That no *exigenter* shall receive any *pluries capias* in order to make an *exigent* or *proclamation* thereon, before the same be signed or stamped by the clerk of the warrants or his deputy, to the end it may likewise thereby appear that the warrants of attorney therein, are duly filed.

F E E S.

*King's Bench.**Common Pleas.*

No fees to be taken for the return of original writs, and process thereon.

BY rule, Mich. 17 Jac. 2. **IT IS ORDERED** by the court, That from henceforth no officers or ministers, attornies, clerks, solicitors, or other person, or persons whatsoever, shall attempt to take, or demand, any *fees* of any person, or persons, for the return of any original writs and process thereon, on pain of imprisonment, and other punishment, due to extortion, and if the offender be any officer, attorney, or clerk, of this court, that then he, or they, shall also be disabled of his, or their practice, in this court.

Orders

King's Bench.

Common Pleas.

Orders made for preventing excessive fees.

By rule, Hilary, 14 Jac. 2. *IT IS ORDERED* by the court, That an examination be had in every court, and in every office in that court, what *fees* were anciently taken, and due, for every thing done in that court, and what has been exacted by colour of erecting new offices, or for *post diems*, or in respect of expedition, or on any other pretence, or colour, whatsoever. The like to be done by the justices of *assize* for *fees*, belonging to the clerk of the *assize* or of the peace, sheriffs, or other officers whatsoever, within their circuits.

The true and ancient *fees* being made known, are to be set down in tables of every court, and for every circuit, and there to remain in such places as those judges of those several courts and circuits, shall assign and appoint.

And that if any officer, attorney, or clerk, shall offend in taking other *fees*, than shall be allowed of, and set down in such tables, then the same officer, attorney, or clerk, for the *first* offence, to make restitution of *treble* so much as he shall have taken of the party; and for the *second* offence to do the like, and to lose his office and place, and to be excluded the court for ever.

Officers of the court not to take more than the antient fees, but from the benevolence of the party or his attorney.

By rule, Mich. 15 Eliz. sec. 12. *IT IS ORDERED* by the court,

*King's Bench.**Common Pleas.*

What is to be paid the secondary, on bringing money into court.

By rule, Hilary 5 Jac. 1. *IT IS ORDERED* by the court, That every party at whose request any sums of money shall be brought into court, here to be kept, shall pay to the *secondary* of the chief justice of our Lord the King here for the time being, for the keeping of such sum of money 20 s. for every *hundred pounds*, and so according to that rate, shall be paid for every greater or lesser sum, for the keeping thereof, as well for a sum of money to be brought in, in form aforesaid, as for a sum of money now remaining in court, and for a sum of money under 10 l. the sum of 2 s. shall be paid for such money as used to be paid formerly.

Fees to be paid on entering of records.

By rule, Easter 13 Jac. 1. *IT IS ORDERED* by the court, That hereafter no attorney of this court for the putting in any record of *nisi prius*, before any justice of *assize*, wherein he shall be named attorney in the record, and shall be attending at the *assizes*, about the trial of such record, shall pay, or be compelled to pay, more or a greater sum of money

court, That no officer, or clerk, of this court, shall take for any entries, process, or search, above the old accustomed *fees*, but of the benevolence of the party, his attorney, or deputy, on pain, for every such default, as is above-said 10 s.

King's Bench.

Common Pleas.

money than the attornies of the court of *common pleas* at *Westminster*, in such cases pay, and have been accustomed to pay, but that the *fees* of the attornies of this court shall be allowed them at the *assizes* aforesaid.

To the clerk of the declarations.

By rule, Mich. 15 Car. 2. *IT IS ORDERED* by the court, That every clerk of this court, in every term, at the time of rendering his account, shall pay to the officer of this court, who receives bills here in court, to be *affiled* of record, the antient^r *fee* of 2s. for every attorney and *filacer* of this court, who retains such clerk to act and enter suits and business, in the said court here depending.

By rule, Easter 19 Car. 2. *IT IS ORDERED* by the court, That every clerk, *filacer*, and attorney of this court, shall pay to the officer of this court, appointed for receiving, filing and keeping bills and declarations here in court, to be filed, the ancient *fee* of 2s. at the end of every term, for his salary for the receiving, filing and keeping the said bills and declarations aforesaid, according to several orders of this court, formerly made in that behalf; and if any clerk, *filacer*, or attorney of this court, shall refuse to pay that *fee* on reasonable request made to him for that purpose, then such clerk, *filacer*, and attorney, shall be suspended from the privilege of his practice in this court, at the discretion of the chief clerk, or secondary of this court.

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Clerks suffering others in arrear, to act in their names, to pay their arrears.

By rule, Trin 20 Car. 2. *IT IS ORDERED* by the court, That if any clerk of this court shall sign, or suffer any writs to be signed, or file, or suffer to be filed, any rolls in his own name, for any other clerk of this court, who is in arrear with his accounts, in the office, then such clerk who so signs, or suffers to be signed, any such writs, or files, or suffers to be filed, any such rolls in his own name, shall pay the arrears of the accounts of such clerks, for whom any such writs were so signed by him, or any such rolls, were so filed by him.

Fees to be paid by the prisoners in the King's Bench.

Dec. 17, 1730, 4 Geo. 2. *SURRY to wit.* A TABLE of fees to be taken by the marshal of the *King's Bench* prison, in the county of *Surry*, for any prisoners commitment, or coming into goal, or chamber rent there, or discharged from thence in any civil action settled and established, the 17th day of *December*, in the 4th year of the reign of His Majesty *King George* the second, anno dom. 1730, pursuant to a late act for the relief of debtors, with respect to the imprisonment of their persons viz.

1st. To the *Marshal* for every prisoner committed on any civil action 4s. 8d.

2d. To

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2d. To the *turnkey* on the master's side 1 s. 6 d.

3d. To the *Marshal* on the discharge of every such prisoner 7 s. 4 d.

4th. To the *deputy marshal* on the discharge of one or more actions, executions, or other charge, and no further *fee* though there be never so many actions 4 s.

5th. To the *clerk of the papers* for the first action on the discharge 3 s.

6th. And to the *clerk of the papers* for every action, execution, or other charge to be paid on the discharge 4 d.

7th. To the *deputy marshal* on the commitment of a prisoner in court or at a judge's chambers in any civil action if carried to the *King's Bench* prison 1 s.

8th. To the *clerk of the papers* for the same 1 s.

9th. To the said *deputy marshal* for a surrender in discharge of bail, be there never so many actions 1 s.

10th. To the *clerk of the papers* for each action on such surrender 6 d.

11th. To each of the four *tipstaffs* 2 s. 6 d. for each prisoner committed by the court and carried to the *King's Bench* prison, in the whole 10 s.

12th. To the *tipstaff* that carries any prisoner committed at a judge's chamber to the said prison 6 s.

13th. To the *marshal* for the use of chamber, bed, bedding and sheets for each prisoner, if provided by the goaler at the prisoner's request, for the first night on the *common side* of the said prison 6 d.

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14th. For the like use every night the prisoner remains in custody after the first 1 d. $\frac{1}{2}$.

15th. And if two lie in a bed one penny each, 2 d.

16th. For the like use of every prisoner that goes on the *masler's side* the first night 6 d.

17th. For the like every night after the first 3 d.

18th. And if two lie in a bed two-pence each, 4 d.

No other fee for the use of the chamber, bed, bedding, or sheets, or on the commitment or discharge of any prisoner on any civil action.

F I L A C E R.

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To attend their duty on pain of forfeiture.

BY rule, Mich. 15 Car. 1. *IT IS ORDERED* by the court, that all and singular the *filacers* of this court, shall appear in person on the *second return* of the next term, to take care of their officers, and to shew cause of their non-attendance, otherwise the office of those so making default shall be seized.

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To attend their duty on pain of forfeiture.

BY rule, Trin. 35 Hen. 7. *IT IS ORDERED*, by the court.

1st, That every *prothonotary filacer, exigenter, King's clerk*, and every other officer of the same place, such as they and their predecessors have used to occupy their offices in their proper persons; and they and their deputies sworn that have used to occupy their offices by their deputies, from henceforth, attend upon their said offices in their places accustomed for the same, and occupy them in their proper persons, on pain of forfeiture and losing of their said offices. That if any of the said officers through sickness or other causes that are reasonable, be licenced or excused by the *Chief Justice* of the same

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same place for the time being, that then he is not to be prejudiced by this rule.

2dly, That none of the said officers or deputies take on them to licence, or do set any clerk or other, in any of their places, or by them to occupy their said offices, or for any other cause, without licence of the *Chief Justice* for the time being, save such as be accustomed to have their clerks sitting by them, that is to say, every prothonotary *two clerks*, the clerk of the estreats, *two clerks*, the keeper of the writs or his deputy, *one clerk*, on pain of imprisonment and paying a fine to the King.

3dly, That no attorney, nor no other person, make out any manner of writs or process in any officer's name, or do business in any other person's office that belongs thereto, without leave and licence from the *Chief Justice* of the same place, for the time being, or of the said officer in whose name he does business, and who if called upon, will affirm the same, on pain of imprisonment, and paying a fine to the King as afore said.

The Filacer to be present on taking bail.

By rule, Trin. 1 W. & M.
IT IS ORDERED, by the court, That the defendant or his attorney, who shall hereafter put in any bail to any *cap. ad respondend.* or other *filacer's writ*, shall duly have recourse to the proper *filacer*, in whose office such bail ought to be entered, and shall

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with

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with him or his clerk, either come into this court, or with him or his clerk attend one of the judges thereof, to take the same, and in case any *filacer's* bail shall be taken, contrary to this order (except it be taken in the *circuit*, which if delivered to the proper *filacer* by the first day of the succeeding term, that so he may have time to enter it on record, shall be as good as such as are taken, as is above directed) this court will punish such contempt. And in order to make the attorney for the defendant diligent in his client's business, this court doth further declare, that where any *filacer's* bail is taken without the proper *filacer*, it is as no bail, and the plaintiff is at liberty to proceed on the sheriff's bond, as if no such bail were ever put in, and that before the defendant shall be admitted to plead to the original action, he shall pay full costs to the plaintiff.

If the Filacer is absent, who is to supply his place.

By rule, Hil. 8 Geo. 2. *IT IS ORDERED* by the court, That in the absence of the *filacer*, bails may be taken on stamped parchment by the judges clerks, on bringing a true abstract of the writ.

Rules to the sheriff for bringing in the body of a prisoner, must be given by the proper Filacer.

By rule, Trin. 2 W. & M. *IT IS ORDERED* by the court, That all rules for the sheriffs to bring in the body of a prisoner, taken

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taken on any process, which has, or shall issue, or which ought to issue out of the office of any *filacer*, be for the future given by the *filacer* from whom such process issued, or ought to have issued, and by no other person, whereof the attorney, clerk, under sheriffs of the several counties, and all others whom it may concern, are to take notice.

Appearances to be entered with the proper Filacer.

By rule, East. 24 Car. 2. *IT IS ORDERED* by the court, That every attorney retained to appear for any defendant to any writ issuing out of this court, which are made by the respective *filacers* of this court, shall from henceforth, according to the course of this court, enter the appearance of all defendants with the proper *filacer* of this court of the city or county, from whom such process respectively did issue where the action is laid, and pay the duty of 6 *d.* to the King, to the said *Filacer*, together with his fee, under the penalty of the act in that case made and provided.

AND IT IS FURTHER ORDERED, That no defendant shall be permitted to imparle, amend his plea, or move to change the venue in any action, until his appearance be entered as aforesaid.

And that no attorney of this court shall receive any declaration, unless an appearance be first entered with the *filacer* as aforesaid, under the like penalty,

And

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And that no attorney shall deliver, or cause to be delivered, any declaration or count to the defendants or tenant's attorney, or to any person for him, until the appearance (to warrant such delivery) be duly entered with the proper filacer, under the penalty to be expelled the court.

AND IT IS FURTHER ORDERED, for the better discovering and punishing of offenders against this order, That the respective *filacers* of this court, may at all convenient times, freely peruse the doggets and other memorials of the *prothonotaries*, respectively, of this court, to the end, that in every term they may deliver in writing the names of all attornies of this court, who shall not have entered the appearances of such defendants who employed them with the proper *filacer* of this court, to the Lord Chief Justice of this court, or his brethren, (which they are hereby required diligently to do) to the end the said justices may, without remissness, proceed against such as shall be found offenders against this order.

A declaration of what writs, process, and entries, are to be made by the Filacers only.

By Rule, Mich. 14 Jac. 1. IT IS ORDERED by the court, That every appearance on every writ of *capias*, *alias*, and *pluries*, issuing out of this court, shall be entered on record by the proper *filacers* only, out of whose office the said writ was issued, and by none of the *prothonotaries*,
or

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or other officers of this court, and that no attorney on pain to forfeit 40 s. to the poor's box for the *first* offence, and expulsion of the court for the *second* offence, shall receive any declaration, or offer his appearance to any clerk or attorney of this court, on any such process before the attorney for the defendant has entered the appearance of the defendant with the *filacer* of the said county, out of which the writ is awarded, for taking of which appearance, and entering thereof on record, the *filacer* shall take the fee of 1 s. 4 d. and no more, whereof he shall allow 4 d. to the attorney which appears for the defendant, for bringing a copy of such writ from the sheriff.

A declaration of what writs, process, and entries, are to be made by the Filacers only.

By rule, Mich. 15 & 16 Eliz. **IT IS ORDERED** by the court, 1st, ALL manner of *capias*, *alias*, and *pluries*, and all other incident process before appearance of the defendant in all actions wherein process of outlawry do lie.

Item, All grand *cape's*, *pones* and *distringasses*, as well *peremptory* as *infinite*, grounded on any original.

Item, All writs of *superseas* on any *capias* awarded out of their own offices.

Item, All writs of *return. habendum* on *nonsuits* before appearance, writs of *second deliverance* before appearance and declaration, writs of *capias in withernam*, *alias*, and *pluries*.

EN-

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ENTRIES and process as Filacers as well as Prothonotaries may make.

1st, The views in pleas real, and writs on the same.

Item, Imparlanee on plain and common declarations in pleas personal or mixed, And also the general issues ad patriam in such actions, and all venire facias on such general issues.

Item, In debt non est factum, general or special, so as the same does not require a serjeant's or council's hand as per minas, per duritiam imprisonmenti, deins age, reins per discent, the lease or acquittance of the plaintiff, whereunto non est factum is pleaded, condition performed, so as it does not require a serjeant's or council's hand to be put thereto, plene administravit, ne unques executor.

Item, In trespass non culpabilis general, and non culpabilis ad novel assignment, son frank-tenement & insult. querent. propriis and in actions on the case the general issue; and all venire facias on such issue, and to deliver them of record, if the party prays it, and continuance on the plea roll, until the habeas corpora awarded.

Item, The fee of every fourpenny writ be increased, and made sixpence, so that the original writ, with the return thereof, be duly taken out in the remembrance, and otherwise not.

FINES.

F I N E S.

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What fines are to be paid on original Writs.

B*y rule, Hilary 6 Will. and Mary, IT IS ORDERED* by the court, That all *fin*es due to our Lord the King and our Lady the Queen, in the court of the said Lord the King and our Lady the Queen, for or on all actions for *debt* and actions for *damages*, prosecuted in the court aforesaid, be received and collected as heretofore.

*Note, The fines now paid, on all original writs where the damages laid exceed 40*l.* are as follows, viz.*

l. s. d.

Form 40 <i>l.</i> to 66 <i>l.</i> }			
13 <i>s.</i> 4 <i>d.</i> i. e. }	0	6	8
100 merks }			
100 merks to 100 <i>l.</i>	0	10	0
100 <i>l.</i> to 200 merks	0	13	4
133 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> to }	0	16	8
166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> }			
166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> to }	1	0	0
200 <i>l.</i> }			
Every 100 merks more	0	6	8
Every 100 <i>l.</i> more	0	10	0

And also every writ of *recordari, pone, accedas ad cur'* (except *de averiis et catallis*) conspiracy, false judgment and *dedimus postestatem*, do pay a fine to the King of 6*s.* 8*d.*

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Writs relating to fines and recoveries to be duly returned and filed.

By rule, Trin. 22 Car. 1. **IT IS ORDERED** by the court, That all attornies, clerks, sheriffs deputies, and officers, be from henceforth more careful to file their *writs of covenant, entry, summons, and seisin*, and other the writs in the statute mentioned. and to make due returns thereof, and to do all other things appertaining to their several offices, which the law requires to be by them performed, touching the said *fines and recoveries*, on pain of such *fines*, and *amerciements*, as the court may affels on them by the said statute; which this court declares they will from time to time put in full execution, according to the statute, for the punishment and prevention of great mischiefs which shall or may happen, by such misprisions, neglects, and contempts as aforesaid.

None but attornies of the court or a justice's clerk, to sue out fines.

By Rule, Easter 43 Eliz. **IT IS ORDERED** by the court, That no *fine* or *dedimus potestatem* shall be received or recovered in this court, unless the same be sued out by some of the attornies of this court, or clerk of some of the justices of *assize*, and subscribed with the name of such attorney or clerk, to the intent if any misdemeanour be committed, they may be called to answer it.

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No *fine* acknowledged before commissioners, to pass; unless one that was present appear before a judge to be examined on oath touching the taking such *fine*.

By rule, Easter 9 Ann. IT IS ORDERED by the court, That for the future, no *fine* whatsoever taken and acknowledged before any commissioners, by virtue or colour of any special *dedimus potestatem* to them directed, do pass the Queen's silver office, and the Queen's silver of such *fine* be recorded, unless oath be made before the lord Chief Justice, or some other justice of this court, of the due execution of the said *fine*, and also of the day and year when such conusor so executed the same; where a rasure in the day or year shall appear in the caption thereof; and that no *fine* so acknowledged before such commissioners, in case of such rasure, be received and entered by the clerk of the Queen's silver of this court, before there be an *allocatur* reciting the day and year of each particular conusor's acknowledgement, under the hand of the said lord Chief Justice, or some other justice of this court, for the passing of the said *fine* first had and obtained.

AND IT IS FURTHER ORDERED, That no *fine* whatsoever, taken and acknowledged before the said lord Chief Justice, or any other judge of *assize*, or serjeant at law, if the date of the caption of such *fine* shall appear to have been rased, do for the future pass the Queen's silver office; and the Queen's silver of such *fine* be recorded by

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the said clerk of the Queen's silver, before there be an order under the hand of the said lord Chief Justice, or some other justice of this court, for his passing and entring such *fine* first had and obtained.

AND IT IS LIKEWISE ORDERED, That after any *fine* whatsoever, shall have passed the said Queen's silver office, and the Queen's silver of such *fine* recorded, that neither the *precipe* or *caption* of any such *fine* or writ of *dedimus potestatem*, or writ of *covenant* by which any such *fine* be passed, shall be rased or altered before there be an order under the hand of the said lord Chief Justice, or some other justice of this court, for the doing thereof, and for amending of all entries made from such writ or writs, first had and obtained.

No writ of covenant in London or Middlesex, to pass the return office, till a note of all the particulars be given the clerk, that the post fines may be levied.

By rule Easter 6 Will. and Mary, **IT IS ORDERED** by the court, That from henceforth no writ or writs of *covenant* or any *fine* or *fines* whatsoever, of any messuages, lands, or tenements, or of rents issuing out of them, lying or being, or which shall therein be mentioned to lie or be, within the city of London and liberties thereof, or within the said county of Middlesex, or either of them, whether the same shall be of messuages, lands, or tenements, in the said city and county, or
either

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either of them *singly*, or *joined* with any other messuages, lands, or tenements in any other city or county, shall be returned by the clerk, for the return of the said *writs of covenant* of this court, for the time being, until the attornies who shall prosecute such *finer*, shall give a note or notes in writing to the said clerk, for the return of the said *writs of covenant* for this court, or his deputy, as well of the person, name, and place of habitation, who is really and properly attorney to the said *fine* or *finer*, as of their own names and places of habitation; as also of the particular street, lane, or place, where such messuages, lands, or tenements, or rents issuing out of the same, are situate; and of the person or persons name, or names, who is or are in possession of such messuages, lands or tenements, or who is or are to pay the *post-fine* or *post-finer* thereon, due unto their Majesties.

AND IT IS FURTHER ORDERED, That the present clerk for the return of the said *writs of covenant* of this court, or his deputy, or the clerk of the returns for the time being, his deputy or clerk; and all attornies of this court, and others concerned therein, shall and do take notice from time to time, of the due execution of this order, and that the said present clerk for the return of the said *writs of covenant* of this court or his deputy, or the clerk, for the return of the said *writs of covenant* of this court, for the time being, his deputy or clerk, shall carefully keep such notes or writing on a file, and do on application

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tion unto them made by the *secondaries*, and under-sheriff of *Middlesex*, or any of them, give unto them or any of them, requesting the same from time to time, or suffer them to take an account in writing thereof, according to the accounts by him or them taken, in pursuance of this order.

And that this order may be made the more public, *IT IS FURTHER ORDERED*, That the same be made a standing rule of this court; and that copies hereof be affixed and set up in the several offices belonging to this court, that all persons therein concerned may be informed and take notice thereof.

Caveats for stopping fines acknowledged by persons disabled in law, to be renewed every term; and copies thereof left with the clerk of the King's silver.

By rule, Hil. 28 and 29 Car. 2. *IT IS ORDERED* by the court, That all rules heretofore made for the staying of any *fine* or *fines*, on any such or the like suggestion or occasion as aforesaid, shall be renewed or continued, and copies thereof left with the said respective officers, before the end of *Easter term* next, or otherwise that the same be no ways obligatory on the said officers, or either of them; and that for the future, all persons making any complaint against such *fines* acknowledged by persons so disabled as aforesaid, or by any person in the name of another, or by the like deceit shall from term to term, so long

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as they expect benefit or observance of such rule, enter and continue the same rule for that term, or leave copies thereof with the said respective officers, that the same may thereby be the better taken notice of, or in default thereof, the said officers or any of them shall not stand further obliged thereby.

And all persons concerned in obtaining or prosecuting such rules for the staying such *fin*es so levied as aforesaid, their attornies or clerks, are hereby enjoined every term, to search and see the books and entries of *fin*es with the clerk of the King's silver or other officer where entries are kept for that purpose.

IT IS FURTHER ORDERED, That for the future, all manner of *caveats* and orders for the stopping *fin*es and *recoveries*, be renewed every term, or else to lose their force.

F O R E J U D G E R.

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Is not to be entered till four or eight days after notice of a bill filed, and a rule given.

BY rule, Hil. 11 Geo. 2. *IT IS ORDERED* by the court, That from and after the last day of term, where any bill shall be filed against any attorney of this court, no *forejudger* shall be entered against him on such bill, for want of appearance, if the action be laid in *London* or *Middlesex*, and such attorney reside within 20 miles of *London* until
four

Rules and Orders of the

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four days after notice in writing, of filing such bill, be given to such attorney or his agent, or left at his usual place of abode, and a rule given for such appearance as usual; and if such attorney resides above 20 miles from London, or the action be laid in any other county than London or Middlesex, then no forejudger shall be entered till *eight days* after such notice shall be given, in such manner as aforesaid, and a rule to appear as aforesaid, the said days to be *exclusive* of the day of giving such notice.

G A O L E R S.

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B*Y* rule, Easter 5 W. & M. **IT IS ORDERED** by the court, 1st That no copy of any declaration shall be delivered to a prisoner in custody, until after the process on which such prisoner shall be taken or charged in custody, be returnable.

2^{dly}, That no rule shall be given for the defendant in custody, to appear and plead to any declaration against him, until an *affidavit* be filed with the proper *secondary*, of the delivery of the copy of such declaration, and the time when, and the person to whom the same copy was delivered; and a copy of the said *affidavit* shall be produced to the prothonotary, before judgment signed, together with a certificate from the proper officer, that no appearance is entered with him.

3^{dly} If

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3dly, If a copy of the declaration be delivered before *one month of Easter* or on the *morrow of all souls*, and affidavit thereof made and filed, and the defendant does not enter his appearance with the proper officer within *ten days after Easter or Michaelmas term* respectively, judgment may be entered against him on the certificate as aforesaid if rules have been given; but if he does not enter his appearance as aforesaid before the end of *ten days* after the term, he shall *imprison* until the next term, unless the action be in *London or Middlesex*, and the defendant be in *prison* within *forty miles* of the cities of *London and Westminster*; then, though he does not appear before the expiration of *ten days* after the end of the term, he shall *plead two days* before the *essoign day* of the next term; and in default thereof, rules having been given, judgment may be entered against him as aforesaid.

4thly, If a copy of the declaration be delivered on or after *one month of Easter* in *Easter term*, or on the *morrow of All Souls* in *Michaelmas term*, or in *Hilary or Trinity term*, and thereupon shall give rules to appear and plead: if the defendant enters his appearance *two days* preceding the *essoign day* of the next term; he shall *imprison* until the said next term; but if he does not appear within that time, judgment may be entered against him as aforesaid.

5thly, If the writ be returnable in one term, and a copy of the declaration be delivered before the *essoign day* of the next term,

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the plaintiff in such next term may give rules to appear and plead, and if the defendant does not enter his appearance and plead by that time that the rules are out; judgment may be granted against him as aforesaid.

6thly, If the declaration be not entered or left in the office before the end of the next term after the writ or process (by which the prisoner shall be taken or charged in custody) be returnable, and an affidavit made and filed in manner aforesaid, before the end of twenty days after such term, (*Easter term* excepted, and within ten days after *Easter term*) the prisoner shall be discharged on the entering of his appearance with the proper officer by writ of *superseatas* made by him according to the ancient practice of this court.

7thly, If any gaoler or keeper of a prison having received a copy of a declaration against a prisoner in his custody, should suppress the same, or not deliver it forthwith to such prisoner, an *attachment* shall be issued against him.

HABEAS CORPUS.

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How to be made returnable in this court

How to be made returnable in this court.

By rule, Michaelmas 1654
Sect. 7, IT IS ORDERED by the court that a *Habeas corpus cum causa ad satisfaciendum*

By rule Michaelmas 1674, Sect. 10 and 11.—The same practice in K. B.

King's Bench.

§ *recipiendum* directed to any sheriff (other than *London* or *Middlesex*) not to be returnable immediately or in the *vacation* time, but at a day certain in court, in the term, unless it be to deliver over to prison in discharge of bail.

That such *habeas corpus* to the sheriffs of *London* or *Middlesex* may be granted in *term* or *vacation* time returnable immediately.

That in case of a *habeas corpus* returnable immediately, the sheriff ought to make his return the same day the writ is delivered, and to bring the body immediately as is required by the writ without permitting him to wander abroad by colour or pretence thereof.

That a *habeas corpus ad respondendum* may be granted to the warden of the *Fleet*, or the keeper of an inferior prison of a liberty or franchise, returnable at a day certain in court; and to be a good cause of detainer as well as where a *capias ad respondendum* comes to the sheriff.

That a *habeas corpus ad satisfaciendum* may be granted to the warden of the *Fleet*, or the keeper of an inferior goal, returnable in court at a day certain; and the number roll of the judgment to be indorsed on the writ by the attorney who sues it out, and such writs to be a cause of detainer.

That upon a *habeas corpus cum causa* the prisoner be returned charged with process out of the
common

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common bench or *exchequer*, though returnable at a day to come, the prisoner may be committed with those causes.

That on a *habeas corpus* or *cepi corpus* the party be returned in custody and bailable, and special bail required; the bail not to be taken absolutely without the consent of the plaintiff or his attorney; and if taken *de bene esse* the prisoner not to be discharged till the bail be assented unto or the plea over-ruled in court, to accept the same on examination.

BY SECT. 8 of the same Rule. IT IS FURTHER ORDERED, That writs of *habeas corpus* directed to the inferior courts of *London, Westminster, Southwark*, and other courts within *five miles of London*, may be returnable *immediately*: and if the defendant intends to be bailed then or within *four days* after allowance of the writ, notice is to be given in writing of the names and addition of the bail, the time when, and the judge before whom the same is intended to be put in, to the plaintiff or his attorney, or him that caused the plaint to be entered; or if none can be found, then notice of the premises to be left in writing with the chief clerk of the inferior court or his deputy, by the party that tenders the bail or his attorney, and oath made thereof; otherwise the bail not to be taken, and a *procedendo* granted, if desired before the bail is accepted.

And if bail be taken in the absence of the plaintiff or his attorney,

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ney, the same is to be taken *de bene esse*, and if no exception be taken within *twenty days* after notice given to the plaintiff or his attorney of the names of the bail and before whom taken; then on oath made of such notice, the bail to be delivered out to be filed.

That if bail on a *habeas corpus* be taken before a judge at his chambers, and not excepted against; if not filed within *four days* after the *twenty days*, a writ of *procedendo* may be granted on certificate that it is not filed.

That in term time the plaintiff in the inferior court may speed the defendant to put in or file his bail by rules given; and if not filed according to rules, on certificate thereof a writ of *procedendo* to be granted.

In what cases bail is required on a *habeas corpus*.

BY rule, Michaelmas 1654, Sect. 9. IT IS ORDERED by the court, That in all causes of removal, be it by *habeas corpus*, writ of privilege or *certiorari*, special bail ought to be given.

That on a cause removed by *habeas corpus* out of the counties of Canterbury, Southampton, or Pool, which are counties where the judges of *nisi prius* seldom come, if the action be transitory it must be laid in the county of York, Kent, Southampton, Dorset, or Stafford, where the town and county lies.

That

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In what causes bail is required on a *habeas corpus*.

The same practice as in K. B.

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That in covenant; because the damages are uncertain till declaration, bail at discretion.

That in battery, conspiracy, or false imprisonment; no special bail of course without motion or order.

That in slander, no special bail, except in slander of title, wherein to be left to the discretion of the judges.

That in privilege, (other than for fees and disbursements in court as an attorney of the court) bail at discretion of the court in such where in a suit by a common person special bail is not requisite.

The bail on a habeas corpus liable to all actions returned on the writ if the plaintiff therein declares in two terms.

By rule, Hilary 2 Jac 2, IT IS ORDERED by the court that every defendant; not being an executor or administrator, who shall sue out any writ of *habeas corpus* to remove any suit out of any inferior court; shall put in bail in all actions whatsoever (actions for scandalous words and small assaults only excepted) unless one of the justices of this court shall otherwise order.

The plaintiff must declare de novo, the record being not moved by the habeas corpus.

By rule, Mich. 16 Car. 2, IT IS ORDERED by the court that every attorney of this court who shall

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shall appear for any defendant in any action in which special bail is not required, shall file common bail for such defendant within *six days* next after the end of the same term of which he appeared.

And that every attorney of this court who shall put in any special bail before any justice of this court, *de bene esse*, on a *cepi corpus*, shall give notice thereof without delay to the plaintiff or his attorney, and if the plaintiff shall not except to that bail, for insufficiency thereof, within *twenty days* next after notice thereof given to him or his attorney, then on *affidavit* in writing of such notice on the back of the said bail-piece, (for which *affidavit* no fee shall be taken) that bail shall be filed by the defendant's attorney within *four days* next after the end of the aforesaid *twenty days*.

And that every attorney of this court, who shall put in any special bail before any justice of this court, *de bene esse*, on a writ of *habeas corpus*, if the plaintiff shall not except to that bail, for insufficiency thereof, within *twenty-eight days* after the putting in thereof, then that bail shall be filed by the defendant's attorney within *four days* after the end of the *twenty-eight days* under the penalty that every attorney making default, either in not giving notice as aforesaid, or in not filing the several bails as is aforesaid, or either of them, in form aforesaid, shall forfeit and pay to the box of the court for his *first* default

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shall appear for any defendant in any action in which special bail is not required, shall file common bail for such defendant within *six days* next after the end of the same term of which he appeared.

And that every attorney of this court who shall put in any special bail before any justice of this court, *de bene esse*, on a *cepi corpus*, shall give notice thereof without delay to the plaintiff or his attorney, and if the plaintiff shall not except to that bail, for insufficiency thereof, within *twenty days* next after notice thereof given to him or his attorney, then on *affidavit* in writing of such notice on the back of the said bail-piece, (for which *affidavit* no fee shall be taken) that bail shall be filed by the defendant's attorney within *four days* next after the end of the aforesaid *twenty days*.

And that every attorney of this court, who shall put in any special bail before any justice of this court, *de bene esse*, on a writ of *habeas corpus*, if the plaintiff shall not except to that bail, for insufficiency thereof, within *twenty-eight days* after the putting in thereof, then that bail shall be filed by the defendant's attorney within *four days* after the end of the *twenty-eight days* under the penalty that every attorney making default, either in not giving notice as aforesaid, or in not filing the several bails as is aforesaid, or either of them, in form aforesaid, shall forfeit and pay to the box of the court for his *first* default

And that every attorney of this court who shall put in any special bail before any justice of this court, *de bene esse*, on a *cepi corpus*, shall give notice thereof without delay to the plaintiff or his attorney, and if the plaintiff shall not except to that bail, for insufficiency thereof, within *twenty days* next after notice thereof given to him or his attorney, then on *affidavit* in writing of such notice on the back of the said bail-piece, (for which *affidavit* no fee shall be taken) that bail shall be filed by the defendant's attorney within *four days* next after the end of the aforesaid *twenty days*.

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default 5s. and for his *second* default shall be struck off the roll of the attornies of this court.

AND IT IS FURTHER ORDERED, to the intent that the bails aforesaid may be duly filed that the clerks of the justices of this court in whose hands the bails so taken *de bene esse* shall remain, shall within *six days* after the end of every term give a note in writing to the secondary of this court of all bails of the foregoing term so put in and then remaining in their hands, together with the names of the attornies who put in those bails, and the day of putting them in.

On commitment to the custody of the Marshal by habeas corpus, the prisoner to remain two days in custody.

By rule, Hilary 5 W. & M. **IT IS ORDERED** by the court, that every prisoner who shall be committed to the custody of the Marshal of the court, by virtue of any writ of *habeas corpus ad respondendum*, or *ad faciend. & recipiend.* shall remain in actual custody of the Marshal by the space of *two days* next after such committal of such prisoner to the said marshal, notwithstanding any other writ of *habeas corpus ad faciend. & recipiend.* issuing out of any other court to the said Marshal delivered and allowed.

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I M P A R L A N C E.

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When the plaintiff may enter an imparlance the term following.

B^R rule Michaelmas 154, Sect. 15. *IT IS ORDERED* by the court, That the plaintiffs, in such special actions shall have liberty to enter *imparlance* the term following, entering the same of the *first* term with an *incipitur* as it has been usual, and that all *imparlances* be entered before any issues, demurrers or judgments, thereon be entered.

That if a defendant appears the *first* term, and gives no rules to declare, the defendant's attorney may, the *second* term, be compelled to accept a declaration with an *imparlance*, and the declaration may be entered as of that term with an *imparlance* over to the next term, or in the *first* term with an *incipitur* as before, as the case shall require.

That if the plaintiff declare not the *second* term, though the defendant give no rules, yet a *non-suit* may be entered at the end of the *second* term upon a *continuance* over by him by *dies datus*, but not the *third* term or after.

Upon a mere real action, an *imparlance* to be of course.

That in *ejectment* or any personal action, if the appearance be the *first* return of *Hilary* or *Trinity* term, no *imparlance* without consent or special rule.

In causes, other than in *London* or *Middlesex*, if the appearance be before the *morrow* of *St. Martin* or one month of *Easter*, no *imparlance*

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imparlance without consent or special rule, but if on or after these returns an *imparlance* of course.

In *London* or *Middlesex*, if the appearance be before *the morrow of the Ascension*, or before the last return of any other term, no *imparlance* without consent or special rule, but the defendant to plead as of that term within *fourteen days* after the end of the term on rule given to answer, but if *on the morrow of the Ascension*, or the last return, then an *imparlance* of course.

If a writ be returnable in *five weeks of Easter* or the last return of any term, the defendant giving rules and calling for a declaration; if it be not delivered *four days* before the *essoign day* of the ensuing term, or more, a *non-suit* to be entered.

In what cases an imparlance is not allowed.

BY rule, *Easter, 5 Ann.* IT IS ORDERED by the court that a special *imparlance* shall not be allowed the defendant, without the leave of this court first obtained.

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In special actions the plaintiff may enter an imparlance the term following with an incipitur.

BY rule, *Michaëlmas 1654, Sect. 14.* IT IS ORDERED by the court; that the plaintiffs, in such special actions, shall have liberty to enter the *imparlance* the term following; entering the same of the *first term* with an *incipitur* as it has been usual in a writ of *quare impedit*, but that all other *imparlances*

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lances be duly entered before any issues, demurrers, or judgments thereupon be entered.

That if the defendant appear the first term, and give no rules to declare, the defendant's attorney may the second term be compelled to accept of a declaration with an *imparlance*, and the declaration may be entered as of that term with an *imparlance* over to the next term, or in the first term with an *incipitur* as before, as the case shall require.

That if the plaintiff declare not the second term, though the defendant give no rules, yet a *non-suit* may be entered at the end of the second term, on a *continuance* over by him entered by *dies datus*, but not the third term or after.

That on a mere real action, or a *clausum fregit*, an *imparlance* of course; but in *dower*, after view had, if the day to appear be on the first return of any *Hilary* or *Trinity* term no *imparlance* without consent or rule of court.

That in *ejectment* or any personal action, if the appearance be to the first return of *Hilary* or *trinity* term no *imparlance* without consent or special rule in such causes, other than in *London* or *Middlesex*. If the appearance be before the *morrow of St. Martin* or *one month of Easter*, no *imparlance* without consent or special rule; but if on or after these returns an *imparlance* of course.

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In *London* or *Middlesex*, if the appearance be before *the morrow of the ascension*, or before the last return of any other term no *imparlance* without consent or special rule, but the defendant to plead as of that term, within *fourteen days* after the end of the term, on a rule given to answer, but if of *the morrow of the ascension*, or the last return, then an *imparlance* of course.

When a prisoner is entitled to an imparlance.

BY rule *Hilary* 14 and 15 *Car.* 2. **IT IS ORDERED** by the court, that if any person be committed to the *Fleet* by *habeas corpus* in this present term, or in any other *Hilary* term, or in the vacation following this term, or any other *Hilary* term, unless the plaintiff or plaintiffs at whose suit the prisoner stands charged at the *Fleet*, shall bring such prisoner to the bar of this court by *habeas corpus*, and declare against him within *four days* after *Trinity* term begun, such prisoner may be discharged by writ of *superfedeas* to be issued of course out of the prothonotary's office of this court, where the commitment of the said prisoner with his cause is entered, so as such prisoner first enter his appearance by attorney with the said prothonotary in case of an attachment of privilege, or of a plaint, or with the Filacer, on other process returnable in this court; and do bring a certificate under the hand of the warden or clerk of the *Fleet*, that no proceedings

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ceedings by *habeas corpus* have been had against him within the time aforesaid.

And that if any person be committed to the *Fleet* in any *Easter* term, or in the *vacation* following any *Easter* term, unless the plaintiff or plaintiffs bring such prisoner to the bar of this court by *habeas corpus* and declare against him within *six* days after *Michaelmas* term begun, such prisoner shall be discharged in manner aforesaid.

And that if any person be committed to the *Fleet* in any *Trinity* term, or in the *vacation* next following any *trinity* term, unless the plaintiff or plaintiffs bring the prisoner to the bar of this court by *habeas corpus*, and declare against him before the end of *Michaelmas* term following, such prisoner may be discharged in manner aforesaid.

And that if any person be committed to the *Fleet* in any *Michaelmas* term, or in the *vacation* following any *Michaelmas* term, unless the plaintiff or plaintiffs bring the prisoner to the bar of this court by *habeas corpus* and declare against him within *six* days after *Easter* term begun, such prisoner may be discharged in manner aforesaid. *AND* the plaintiff or plaintiffs may declare on such appearance, entered the next term after such appearance, a *superseas* being granted and the attorney appearing for such prisoner, shall be bound to take a declaration.

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IT IS FURTHER ORDERED, that if the plaintiff or plaintiffs, at whose suit such person is arrested and in custody, do not move such prisoner by *habeas corpus* to the fleet, nor the prisoner enter appearance in manner aforesaid, such prisoner may be discharged by *superfedeas*, at the end of the *third* term after the arrest, according to the course anciently used; and the plaintiff may declare on such appearance the term following, but not after: But if such prisoner cause an appearance to be entered for him by attorney, and cause notice thereof to be given to the plaintiff or his attorney, if oath thereof be made in writing and filed in court, unless the plaintiff or plaintiffs declare against such prisoner in the term next after such appearance, the prisoner may be discharged by *superfedeas*, so as oath be made by the attorney for the defendant, that no declaration has been delivered or tendered to him, and the plaintiff or plaintiffs may declare against the defendant the term next after such appearance entered, but not afterwards.

AND IT IS FURTHER ORDERED, That in case any such prisoner shall thereafter be put to the bar of this court by writ of *habeas corpus* returnable at any day certain, being before the day of appearance of the *third* return of any term, and the said prisoner name an attorney, who shall appear for him at the suit of the plaintiff in the action in the said writ specified, the said defendant to be compellable to plead by the last

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last day of the said term to a declaration to be delivered to the said attorney, if the plaintiff give a rule for him so to do. But where any prisoner is ordered to the bar by such writ returnable after the day of appearance of such third return of any term, the defendant of course to have *imparlance* until the next term following; but if such prisoner refuse to nominate an attorney to answer for him, then such prisoner is to plead within *eight days* according to the said act, provided that there be *eight days* after the return of the *habeas corpus* to give a rule to be out within the term.

AND LASTLY IT IS ORDERED, That after issue joined, *ten days* notice, at least *exclusive* of the day of such notice to be given to the defendant (being actually in the prison of the *Fleet*) of the time of trial of such issue to be had.

When the defendant shall have an imparlance for want of entering imparlance or incipitur.

BY rule *Trin. Car. 2. IT IS ORDERED by the court, that henceforth all attorneys and clerks of this court do *duly* enter or cause to be entered *imparlances* or *incipiturs* in all causes, according to the antient usage and custom of this court, and that the want of entering an *imparlance* or *incipitur*, in every cause wherein *imparlances* ought to be entered, be a sufficient cause for the defendant to have a further *imparlance*.*

And

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And that no attorney, clerk, or any minister of this court shall hereafter give any common rule to plead in any cause wherein *imparlances* or *incipiturs* ought to be, and are not entered on record in any of the prothonotary's remembrances, until the respective prothonotary in whose office the cause is shall give allowance for the giving of such rule to plead.

In what time the defendant must plead without an imparlance.

BY rule Michaelmas 3 Geo. 2. **IT IS ORDERED** by the court, That on all process sued out of this court returnable the *first* or *second* return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within *twenty miles* of *London*, the defendant shall plead within *four days* after such declaration delivered without any *imparlance*, and such declaration may be delivered *de bene esse*, and in case the plaintiff declares in any other county, or the defendant lives above *twenty miles* from *London*, the defendant shall plead within *eight days* after the declaration delivered without any *imparlance*, and in default of pleading as aforesaid, the plaintiff may sign his judgment.

INQUIRY. (*Writ of*)

What notice to be given of executing the same.

BY Rule Michaelmas 4 Ann. The same practice as in C. P.

What notice to be given of executing the same.

BY rule Michaelmas 1654, Sect. 21. **IT IS ORDERED** by the court, that notice of trials or inquiries

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In what cases the defendant is obliged to accept of notice of inquiry from the time that notice of trial was given.

BY rule Hilary 8 Geo. 1. **IT IS ORDERED** by the court, that in every case where the plaintiff shall conclude to the country on the defendant's plea, and shall give notice of trial of the issue on the paper book as aforesaid, and thereon the defendant to hinder the trial of the issue, shall demurr in law on the replication or plea of the plaintiff, and the plaintiff shall join in such demurrer, and thereon shall obtain judgment, the attorney for the defendant shall be obliged to accept of executing a writ of enquiry of damages from the time of notice of trial given on the paper book as aforesaid.

Notè, The hour and place of executing the writ of inquiry must be expressed in the notice.

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inquiries in London or Middlesex, the defendant dwelling within forty miles of London, eight days, exclusive of the day the same is given : and if the defendant lives above forty miles distant from London notice of such trials and inquiries in London or Middlesex be fourteen days, exclusive of the day of notice.

In what cases the defendant is obliged to accept of notice of inquiry, from the time that notice of trial was given.

BY rule, Hilary 6 Geo. 1. **IT IS ORDERED** by the court, that in all cases where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of the pleadings, pursuant to rule Trin. 2. Geo. 1. if the defendant does not join issue on such pleadings before the rule be out, that in every such case, after judgment obtained, the defendant's attorney shall be obliged to accept of notice of executing a writ of inquiry from the time that notice of trial was given on the back of such pleadings as aforesaid.

The same Practice as in K. B.

On signing judgment on a writ of inquiry, the inquisition must be left with the clerk of the judgments.

BY rule, Trinity 13 Geo. 2. **IT IS ORDERED** by the court, that from and after the last day

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of this term where final judgment shall be signed on *posseas* or *inquisitions* on writs of inquiry, such *posseas* or *inquisitions* shall immediately be left with the clerk of the judgments of the respective *prothonotaries*, and shall not afterwards be taken out of the office without leave of the court.

INROLMENT of DEEDS, &c.

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No indenture writ of error, issue, or demurrer to be entered on the *Filacer's* rolls.

BY rule Trinity, 15 Jac. 2. IT IS ORDERED by the court, That no record of *nisi prius* be sealed by any officer of this court, after the 21st day of July next coming till the *issue* or part thereof, be entered on the number roll; and such *issue* be shewn to the *secondary* of this court, and by him signed and licenced to be sealed. AND that no rolls, numbered, be delivered to any person, unless to the clerks of the chief clerk, and not to any other person, attorney, or other *filacer*. AND, that no clerk, attorney, or *filacer* shall hereafter inrol any indenture, writing, writ of error, issue, or demurrer in law, or any *filacer's* roll.

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Deeds acknowledged in court to be inrolled on the rolls of the chief clerk only, and the party acknowledging the same to appear in court.

By rule Hilary 11 W. 3. **IT IS ORDERED** by the court, That all deeds and indentures acknowledged here in court, or before any justice of this court, for the future shall be inrolled among the rolls of the chief clerk of this court assigned to inrol pleas, and not elsewhere; and that every person, acknowledging any such deed or indenture, hereafter in court to be inrolled, shall appear publicly in court and acknowledge such deed or indenture in open court, and that every deed acknowledged out of court before any justice, shall be brought here into court by such justice to be inrolled.

IRREGULARITIES.

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Advantage to be taken thereof as soon as the same happens.

BY Rule Hilary 2 Geo. 2. **IT IS ORDERED** by the court, that for the future no distinction, as to the time of signing judgment, will be made between town and country causes; but that in all cases the plaintiff is at liberty to sign his judgment the day after the rules for pleading are out, the declaration having been regularly delivered and filed, and the defendant or his agent being called

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called on for a plea according to the rules and course of this court.

Notes of practice on this rule.

Although a judgment be strictly regular, yet, if the plaintiff has not lost a trial, the court will in many cases, (on payment of costs, pleading to issue, and accepting notice of trial within the term) set aside the judgment, that the merits may be tried.

If there be any irregularity in the process or proceedings before or after judgment, it behoves the defendant's attorney to apply to the court as soon as the irregularity happens, for in many instances where he has lain by and let the plaintiff proceed, and be at great expence, the court has refused to assist the defendant.

I S S U E.

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BY rule Michaelmas 5 Ann, **IT IS ORDERED** by the court, That from and after the first day of next Hilary term, every judgment in debt, case, covenant, trespass, trover, or any other action, shall be entered fairly on the roll, or an incipitur thereof, before such judgment shall be signed by the secondary or any justice of this court, and the names of the plaintiff and defendant, with the name of the county where the action is laid, and the nature of the action, with the attorney's name, shall

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BY rule Easter 5 W. & M. **IT IS ORDERED** by the court, That the several and respective officers of this court shall deliver in all their rolls of Trinity, Michaelmas and Hilary terms to the clerk of the *essoigns* before the *essoign* day of the several terms following, and their rolls of Easter term, on or before the first day of Trinity term following, and that officer which shall not bring or send in all his rolls of the said several terms at the times aforesaid, shall pay to the clerk of the *essoigns* for every

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shall be entered in a book to be kept by the *secondary* of the court for that purpose for which nothing shall be paid but the ancient and accustomed fee for entering such judgment.

AND IT IS FURTHER ORDERED, That no record of *nisi prius* shall be sealed and passed at the *nisi prius* office by the *custos brevium* of this court, or any clerk of that office, before the issue in that cause be fairly entered on record, or an *incipitur* thereof, and such entry with the record of *nisi prius* be first brought and signed by the *secondary* of this court, for which no fee shall be demanded or paid, but the usual and accustomed fee due to the chief clerk of this court for the entry of such issue on record.

AND IT IS FURTHER ORDERED, That every attorney shall bring in all his rolls into the office, fairly ingrossed, in a good full court hand by the times limited by former rules (that is to say) the rolls of *Trinity*, *Michaelmas*, and *Hilary terms*, before the *essoign day* of every subsequent term, and the rolls of *Easter term* before the *first day* of *Trinity term*, and that no attorney at large or any other person shall take any numbers or file any rolls but the clerks of the chief clerk of this court only.

Copy of the general issue or demurrer to be delivered and paid for at 4d. per sheet, or judgment may be signed against the party refusing.

By rule *Trinity 12 W. 3.* **IT IS ORDERED** by the court, That from and after the *first day* of next *Michaelmas*

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every roll brought in after, 12d. according to the ancient rule of this court.

IT IS HEREBY LIKEWISE ORDERED that the plea rolls of every term, hereafter, shall be brought in to the clerk of the *essoigns*, within *three weeks* after the end of the term following; and in default thereof, there shall be likewise paid to the clerk of the *essoigns*, for every plea roll brought in after 12d.

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Michaelmas term, on the appearance of any attorney or other person for any defendant in this court, the plaintiff's attorney shall not be bound to deliver to the defendant's attorney the original declaration, but instead thereof shall deliver a true copy of such declaration, and that on the delivery or tender thereof the defendant's attorney or other person acting for him shall pay unto the plaintiff's attorney, or other person acting for him, for the copy of such declaration after the rate of *4d. per sheet*, copy-ways, together with the stamps or King's duty thereon, which shall serve and be in lieu of the copy of such declaration usually made by the defendant's attorney; and that on pleading any general issue or general demurrer to any declaration, before any special demurrer or special plea pleaded, the plaintiff's attorney shall and may deliver unto the defendant's attorney a copy of such issue or demurrer; who shall pay for the same after the rate of *4d. per sheet*, copy-ways, and also for the stamps thereon. And if any attorney or other person shall refuse to pay for the copy of any declaration, so as aforesaid tendered, the plaintiff's attorney shall and may leave the said copy of such declaration in the office with the clerk that keeps the files of declarations of this court, who shall receive the same without fee or reward, and thereupon the plaintiff's attorney, giving rules to plead, may, for want of a plea, sign judgment and before any plea shall be received, the defendant's attorney shall pay for the copy of such

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such declaration and the stamps as aforesaid. AND in case the defendant's attorney shall not pay for the copy of any general issue, or demurrer so as aforesaid joined, and also for the stamps: the plaintiff's attorney may sign judgment as if no plea or demurrer had been given or pleaded.

What time allowed by the court for the plaintiff to enter his issue.

By note on rule Michaelmas 4 Ann, The plaintiff must enter his issue if the action be laid in *London* or *Middlesex*, and bring the record into the office within *four days* after notice of the rule, if in the country, before the *continuance day* of that term, or a *non prof.* may be signed and entered.

If the action be laid in *London*, or *Middlesex* the defendant ought not to give a rule for the plaintiff to enter his issue the same term in which the issue is joined, unless notice of trial has been given; and, in a country cause, the plaintiff is no ways bound to enter his issue the same term.

No trial can be had by *provisoe*, in *London* or *Middlesex*, till default is made by the plaintiff after the issue be entered on record; nor in country causes, till the plaintiff has made default in trying his issue the next *assizes* after the issue is entered, and in neither case till a rule for trial by *provisoe* be entered.

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If both the plaintiff and defendant happen to carry down the record at the same time, the trial shall be by the plaintiff's record if he enters it with the Marshal, but if he refuses or omits, the defendant may proceed on his record.

J U D G M E N T.

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Judgment to be signed only in the Prothonotaries offices.

BY rule Michaelmas 6 Geo. 2. **IT IS ORDERED** by the court, that from and after the last day of this term, judgments signed in causes depending in this court, shall be signed in the office of one of the Prothonotaries of this court, and not elsewhere.

On signing judgments the day of the month to be set down in the paper book and entered on the roll, &c.

By rule Trinity 29 Car. 2. **IT IS ORDERED** by the court, That the respective attornies and clerks of this court, that shall procure any judgment to be signed as aforesaid, (after the 24th day of June) shall, at the bringing in of the rolls to the respective Prothonotaries at the same time when such judgments are entered, produce the respective paper books whereon such judgments are signed, that so, the respective Prothonotaries may the better examine the

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the respective days entered on the margin of the roll of each particular judgment, that they do agree with the respective days signed by such prothonotaries on the respective paper books.

AND IT IS FURTHER ORDERED, That every attorney or clerk that shall make such entries shall bring in their respective rolls to the respective prothonotaries in manner and form following, *that is to say,* The rolls of every *Trinity term* in every year at or before the *feast day* of *St. Michael the archangel* then next following; and the respective rolls of every *Michaelmas term* in every year, at or before the *feast day* of *St. Thomas the apostle* then likewise following, and likewise the respective rolls of every *Hilary term* in every year at or before the *Annunciation of our Lady the Virgin* then next likewise following, and also, the respective rolls of every *Easter term* in every year at or before the first day of every *Trinity term* in every year then likewise following, under such pains and punishments, on every default made by any attorney or clerk of this court, as this court shall think fit to inflict on such defaulters.

AND IT IS FURTHER ORDERED that on the signing of all judgments by the respective prothonotaries of this court on *posseas*, *writs of enquiry*, *special verdicts*, *demurrers*, *nul tiel records*, *relicta verificatione*, and such like judgments, the same shall be delivered over forthwith, after such signing, to the respective clerks of the judges in each office, that

so

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so the respective days, being the times when such judgments are signed, may be drawn up in the respective judgment papers in each prothonotary's office, that so the same may be entered on the margin of the roll of every such record where such judgment is entered.

AND IT IS FURTHER ORDERED, That the respective prothonotary shall not sign any judgment by such confession either by *non sum inform.* or *nihil dic.* unless the same be brought to be signed within *twenty days* after the respective end of every *Trinity, Michaelmas, and Hilary terms* in every year respectively, and at or before the *first day* of every *Trinity term* in every year, unless such attorney or clerk do produce before such prothonotary a warrant or warrants of attorney that do bear date after the end of every such term, and then such judgments on such warrants so produced, may be signed at or before the *essoign day* of every succeeding term in every year, and not after.

By rule Mich. 1654, sect. 15. IT IS ORDERED by the court, That no judgment by *nihil dicit* be entered until there be a rule to plead first given in that prothonotary's office where the cause is entered, and the day by such rule be past, and that such rules be only given in the bills of pleas or other remembrances for that purpose only to be in the custody of the secondary of the respective prothonotaries during the time limited for

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for giving of rules, to the intent that all persons concerned may have recourse to the said secondary, and to see the same gratis, and that clerks who usually enter for attornies may give rules for answer in the said remembrances in all their own causes wherein there has been imparlances, except in *ejectments*, so as they enter the same rules in the office, without carrying any of the said remembrances out of any of the said offices, and that the secondary set down on the remembrances the day wherein such rules are given, and that no rules to declare or answer be given after *three days* exclusive after the end of any term, and such rule to be out at *four days* inclusive of the day wherein the same is given.

That in all actions except *replevin*, (after rules to declare are out) if the plaintiff, or his known attorney, or clerk be to be found, a nonsuit for want of a declaration not to be entered unless the plaintiff's attorney or known clerk be first called to for a declaration, and delivers it not to the defendant or his attorney, some time during that term, then the rule being out, the defendant's attorney may enter a nonsuit.

That if the plaintiff's attorney being called to for a declaration, cannot afterwards find the defendant's attorney or clerk to save a non-suit, he may deliver a declaration into the prothonotary's office where the rules are given.

That when a deed, will, or letters of administration are to be

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shewn in a declaration, the attorney of the plaintiff delivering a declaration with a subscription that the defendant should not be compelled to plead till the same be shewn, no judgment by *nihil dicit* to be entered against the defendant till the same is shewn, nor any nonsuit on the plaintiff, if he shew the same before the end of the next term.

If the defendant be committed to prison by process out of this court, or *habeas corpus*, the prisoner entering his appearance with the prothonotary in case of a *plaint*, or in case of an *attachment of privilege*, or with the filacer in case of other process and giving rules to declare, the plaintiff not declaring before the end of the next term after the commitment, the defendant in reference thereunto to be discharged of his imprisonment by *superfedeas* in the end of the next term, and liberty for the plaintiff to declare on that appearance the next term after that at the furthest.

That if a writ be returnable in *five weeks of Easter*, or the last return of any term, the defendant giving a rule, and calling for a declaration, if it be not delivered according to the former directions *four days* or more before the *assign day* of the ensuing term, may enter a non-suit, though *sixteen days* after the preceding term:

That the plaintiff having declared and given rules to answer, the defendant is to deliver his plea in
writing

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writing to the plaintiff's attorney or his known clerk.

That if there be no such attorney or clerk to be found, or being found, refuses to accept it, then the plea may be left in the office to save a judgment.

That in any case where a plea or declaration is left in the office, no non-suit for want of a declaration, or judgment for want of a plea, be entered.

That in cases of popular actions, and informations, or real or mixed actions, except ejectment no judgment to be entered by default, or *nihil dicit* without motion in court.

That on *nul tiel record* pleaded, and no difficulty or variance appearing, judgment be entered after a rule, without motion, by the plaintiff.

That after any imparlance of *three terms* without any calling for an answer, no judgment to be entered without a term's notice.

On signing judgments the poslea or inquisition to be left with the clerk of the judgments.

BY rule Trinity, 13 Geo. 2. **IT** IS ORDERED by the court, That from and after the *last day* of this term where final judgment shall be signed on *posleas* or *inquisitions* on writs of inquiry, such *posleas* or *inquisitions* shall be immediately left with the clerk of the judgments

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judgments of the respective prothonotaries, and shall not afterwards be taken out of the office without leave of the court.

No judgments (except final judgments on posseas, writs of inquiry and non pros's) be signed, unless the Stamp of the Clerk of the warrants be first impressed on the judgment paper

BY rule Michaelmas 6 Geo. 2. **IT IS ORDERED** by the court, that from and after the first day of the next term, no judgment whatever (except final judgments on *posseas* and writs of inquiry, and non-proffes, shall be signed by any of the prothonotaries of the court, unless the stamp of the clerk of the warrants of this court be first impressed on the paper whereon such judgment is to be signed, whereby it may appear that the warrants of attorney are filed.

The clerk of the essoigns to dogget judgments on the penalty of 100l.

BY rule Easter 5 W. & M. **IT IS ORDERED** by the court, That the clerk of the *essoigns* is to make an alphabetical dogget of all the judgments entered in this court of *Michaelmas* and *Hilary* terms, before the last days of the several terms following, and the judgments of *Easter* and *Trinity* terms, before the last day of *Michaelmas* term following under the penalty of 100l.

AND

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AND IT IS FURTHER ORDERED by this court that the several and respective officers of this court shall deliver in all their rolls of *Trinity, Michaelmas, or Hilary* terms to the clerk of the *essoigns* before the *essoign day* of the several terms following, and their rolls of *Easter* term, on or before the *first day* of *Trinity* term following, and that the officer, which shall not bring or send in all his rolls of the said several terms at the times aforesaid, shall pay to the clerk of the *essoigns* for every roll brought in after, *12d.* according to the ancient rule of this court.

A warrant of attorney to confess judgment, by a person in custody not binding, unless his attorney be present.

BY Rule Easter 15 Car. 2. IT IS ORDERED by the court, that no bailiff or sheriff's officer shall presume to exact or take from any person, being in his custody by arrest, any warrant to acknowledge a judgment, but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereunto, which said warrant shall be produced when the said judgment shall be acknowledged. **AND** if any bailiff or sheriff's officer shall hereafter offend or do contrarywise, he shall be severely punished for so doing. **AND IT IS FURTHER ORDERED**, That no attorney shall from henceforth acknowledge, or enter or cause to be acknowledged or entered any judgment gotten from any

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any defendant, being under an arrest, otherwise than as aforesaid.

Every judgment or an incipitur to be entered on the roll before such judgment be signed.

BY rule Michaelmas 5 Ann. **IT IS ORDERED** by the court, That from and after the first day of next Hilary term, every judgment in debt, case, covenant, trespass, trover, or any other action shall be entered fairly on the roll, or an incipitur thereof before such judgment shall be signed by the secondary, or any justice of this court, and the names of the plaintiff and defendant, with the county where the action is laid, and the nature of the action, with the attorney's name shall be entered in a book to be kept by the secondary of the court for that purpose for which nothing shall be paid but the ancient and accustomed fee for entering such judgment.

A warrant of attorney to confess judgment by a person in custody not binding unless his attorney be present.

By rule, Easter, Car. 2. **IT IS ORDERED** by the court, That no bailiff or sheriff's officer shall presume to exact, or take from any person being in his custody by arrest, any warrant to acknowledge a judgement, but in the presence of an attorney for the defendant; which attorney shall then subscribe his name thereunto, which said warrant shall

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be produced when the said judgment shall be acknowledged; and if any bailiff or sheriff's officer shall hereafter offend or do contrarywise, he shall be severely punished for so doing.

AND IT IS FURTHER ORDERED, That no attorney shall from henceforth acknowledge or enter, or cause to be acknowledged or entered, any judgment by colour of any warrant gotten from any defendant being under an arrest, otherwise than as aforesaid.

Every judgment or an incipitur, to be entered on the roll before such judgment be signed.

BY rule, *Michaelmas, 5 Ann.*
IT IS ORDERED by the court, That from and after the first day of next *Hilary* term, every judgment in *debt, lease, covenant, trespass, trover*, or any other action, shall be entered fairly on the roll, or an *incipitur* thereof, before such judgment shall be signed by the secondary, or any justice of this court, and the names of the plaintiff and defendant with the county where the action is laid, and the nature of the action with the attorney's name shall be entered in a book to be kept by the secondary of the court for that purpose, for which nothing shall be paid but the ancient and accustomed fee for entering such judgment.

Common Pleas.

AND IT IS FURTHER ORDERED by this court, That the several and respective officers of this court shall deliver in all their rolls of *Trinity, Michaelmas, or Hilary* terms to the clerk of the *essoins* before the *essoin day* of the several terms following, and their rolls of *Easter* term, on or before the *first day* of *Trinity* term following, and that the officer, which shall not bring or send in all his rolls of the said several terms at the times aforesaid, shall pay to the clerk of the *essoins* for every roll brought in after, 12*d.* according to the ancient rule.

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For the better finding judgments the officer is to enter the debtor's names alphabetically.

BY rule, Easter, 1657, *It IS ORDERED* by the court, That the debtor's names in all judgments that shall be entered in this court as of this term, or hereafter shall be entered, in a remembrance or docket alphabetically for the better finding out of the said judgment.

BY rule, Easter 17, *Jac. 1. It IS ORDERED* by the court, here-in full court, That where any judgment in any cause whatsoever, here in the court of the lord the king, before the king himself, shall hereafter be given where the debt and damages amount to the sum of 20*l.* or more, that every attorney in such cause, shall make or cause to be made, a note in parchment or paper containing the names and surnames of the parties plaintiffs and defendants, and the debt and damages to be recovered together with the term and roll where such judgment shall be entered in the following form.

Term ——— Roll——

C. D. at the suit of *A. B.*

Damages — 23*l.* 13*s.* 4*d.*

Hilary 15——— Roll——

And shall deliver such note made to *L. C.* one of the clerks of the court, and to every other clerk who for the future shall ex-

cut

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cute his place, to be registered by him in a certain book to be provided for that purpose.

Warrants of attorney how to be entered on the roll.

BY rule, Easter, 4 Jac. 2. **IT IS ORDERED** by the court, That every clerk and attorney of this court, who hereafter shall enter any cause of error, shall enter in the beginning of every cause so entered, the warrant of attorney for the plaintiff and defendant in such causes, otherwise their rolls shall not be filed or received.

How judgments are to be entered on the roll.

BY rule, Hilary. 1657. **IT IS ORDERED** by the court, **IMPRIMIS**, That according to the antient usage and custom of the court, none be permitted to enter any causes or judgments on the prothonotaries rolls, but the prothonotaries or their clerks, to whom the entering thereof does of right belong, and that all the rolls be entered in a full, fair hand, with a large margin of an inch at least, and a convenient distance at the top, for the binding up of the same, and at the bottom, that the writing be not rubbed out.

ITEM, That none be suffered to have access unto the rolls or records, files of declarations, writs or bails, but clerks of the office, or filacers, who may be answerable

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*King's Bench.**Common Pleas.*

for any misdemeanors which shall be objected against them.

ITEM, that no one do deliver any copies of special verdicts or demurrers, to the justices of this court, but the clerks of the office who ought to copy and deliver them, and are to examine them and see they be true, and be answerable for any mistake in the same.

ITEM, that no *Postas* be delivered out of court to any person whatsoever, but to the prothonotaries or their clerks, or to the filacers of this court, who may be answerable for the same, in case any complaint shall be objected against them.

ITEM, that if any clerk of the office shall permit or suffer any other whatsoever to write or set his name to any accountable writ or writs that are to be signed, or to any other writ that belongs to the prothonotaries of this court, and their clerks to make but such as shall be written by the hand writing of the said clerk or his servant, that he or they shall for the *first* offence in that kind forfeit 20s. and for the *second* offence shall be expelled out of the office.

BY rule Mich. 5 Ann. *IT IS ORDERED* by the court, That from and after the *first* day of next *Hilary* term, every judgment in *debt*, *case*, *covenant*, *trover*, or any other action, shall be fairly entered on the roll, or an *incipitur* thereof

King's Bench.

thereof before such judgment shall be signed by the secondary, or any justice of this court, and the names of the plaintiff and defendant, with the county where the action is laid, and the nature of the action with the attorney's name, shall be entered in a book to be kept by the secondary of the court for that purpose, for which nothing shall be paid but the antient and accustomed fee for entering such judgment.

By note on rule Easter 5 Geo. 2.

No judgment given either for the plaintiff or defendant on a writ of *nisi prius* or inquiry can be entered until the expiration of *four days* exclusive of the entry of a rule for judgment, during which *four days*, the party against whom the judgment is given, may first move for a new trial, and if it be denied, may then move in arrest of judgment, but cannot move for a new trial after he has moved in arrest of judgment and failed.

Sunday, or any other day on which the court does not sit, is not reckoned one of the *four days*, unless the rule be entered on the last day of the term, or within *four days*, (during which *four days*, it is the practice to enter these rules as of the last day of the term) and at the expiration of *four days* exclusive after entering such rule judgment may be entered.

*Common Pleas.**Judgment*

King's Bench.

Judgment may be entered for not paying for the filing the warrant of attorney.

BY rule, Michaelmas, 5 Ann. **IT IS ORDERED** by the court, That the attorney for the defendant at the time of his appearance for such defendant, shall give the plaintiff's attorney the warrant of attorney for such defendant, and at the time of the delivery of the copy of the declaration or taking thereof out of the office where it is filed, shall pay *four pence* for the said warrant of attorney, which warrant of attorney the said plaintiff's attorney shall file with the officer appointed for filing thereof, at the same time when he files or ought to file the warrant of attorney for the plaintiff; and if such attorney for the defendant shall refuse to pay the plaintiff's attorney the said *four pence*, for the said warrant of attorney in manner and form aforesaid, then such attorney for the plaintiff, on such refusal, may sign judgment against the defendant in such action by default.

For not paying for, and taking the declaration out of the office.

BY rule, Trinity, 12 Wm. 3. **IT IS ORDERED** by the court, That from and after the *first* day of next Mich. term, on the appearance of an attorney or other person for any defendant in this court, the plaintiff's attorney shall not be bound to deliver to the defendant's attorney

Common Pleas.

Judgment may be entered for not paying for the filing the warrant of attorney.

BY rule, Hilary, 2 & 3 Jac. 2. The same practice as in K. B.

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attorney the original declaration, but instead thereof, shall deliver a true copy of such declaration, and that on delivery or tender thereof, the defendant's attorney or agent, shall pay for the same after the rate of *four pence per sheet* copyways, and the same for general issues and demurrers, and in case the same are not paid for, the plaintiff's attorney may sign judgment as if no declaration plea or demurrer had been delivered, given, or pleaded.

—For want of a plea.

By rule, Mich. 10 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this term, on all procefs to be issued and made returnable, the first or second return, where there is no *affidavit* of the cause of action, and the declaration is delivered *de bene esse* according to the stat. to plead in *four days* if the defendant does not plead in that time, judgment may be signed, a rule to plead being first duly entered.

—For not paying for the general issue.

By rule, Mich. 12 Wm. 3. IT IS ORDERED by the court, That in case the defendant's attorney shall not pay for the copy of the general issue or demurrer, after the rate of *four pence per sheet* copyways, and also for the stamps, the plaintiff's attorney may sign judgment as if no plea or demurrer had been given or pleaded.

—For

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IT IS ORDERED by the court, That if the defendant's attorney or agent, shall not pay for the copy of the declaration, after the rate of *four pence per sheet* copyways, and the same for general issues and demurrers, and in case the same are not paid for, the plaintiff's attorney may sign judgment as if no declaration plea or demurrer had been delivered, given, or pleaded.

By rule, Mich. 3 Geo. 2. and Easter 3 Geo. 2. The same practice as in K. B.

ORDERED by the court, That if the defendant's attorney or agent, shall not pay for the copy of the declaration, after the rate of *four pence per sheet* copyways, and the same for general issues and demurrers, and in case the same are not paid for, the plaintiff's attorney may sign judgment as if no declaration plea or demurrer had been delivered, given, or pleaded.

King's Bench.

Common Pleas.

For not returning the paper book.

By note on rule Trin. 1 Geo. 2. **IT IS ORDERED**, That if a paper book be made up and delivered in term time, or within *four days exclusive* after term, with a rule thereon given by the clerk of the papers, for bringing the same book to be inrolled, and the defendant's attorney does not within *four days* after the delivery thereof, bring back the book and join with the plaintiff in the special issue or demurrer made up or wave his special plea and give the general issue or demurrer to any special issue tendered and pay for entering the pleadings, on his part, judgment may be signed and entered as if no plea had been pleaded.

Note. In all cases, if the plaintiff's attorney accepts the paper book after the time limited for returning the same, he cannot sign judgment.

When judgments tho' regular may be set aside.

By rule, Hilary 2 Geo. 2. **IT IS ORDERED**, That for the future, no distinction as to the time of signing judgment will be made between town and country causes, but that in all cases the plaintiff is at liberty to sign his judgment the day after the rules for pleading are out, a declaration having been regularly delivered and filed, and the defendant or his agent being called upon for a plea, according to the rules and practice of the court.

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King's Bench.

In causes removed by Habeas Corpus, the courts below to be considered and cast into the judgment.

BY rule, Easter, 1654, *sect.* 22. **IT IS ORDERED** by the court, That on a cause removed by *habeas corpus* out of an inferior court, having jurisdiction of the cause, if judgment be given for the plaintiff, the costs below to be considered and cast into the judgment, if for the defendant, the charges of putting in bail.

That in a judgment by *non sum informatus*, or *nihil dicit in ejectione firmæ* the *capiatur* to be entered on the first judgment.

No rule for judgment on a writ of nisi prius or inquiry, to be given before the day in bank.

By rule, Easter, 5 Geo. 2. **IT IS ORDERED**, That no judgment given for the plaintiff or defendant on a writ of *nisi prius* or inquiry can be entered until the expiration of *four days* exclusive of the entry of a rule for judgment, during which *four days* the party against whom the judgment is given, may first move for a new trial, and if it be denied, may then move in arrest of judgment, but cannot move for a new trial after he has moved in arrest of judgment.

Sunday, or any other day on which the court does not sit, is not reckoned *one* of the *four days*, unless the rule be entered on the

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last day of the term, or within *four days* after the term, (during which *four days*, it is the practice to enter these rules as of the last day of the term) and at the expiration of four days exclusive after entering such rule, judgment may be entered.

This rule ought not to be entered before the day in *bank*, and is not necessary if the plaintiff be nonsuited, for in that case, judgment may be entered immediately after the day in *bank*.

After the rule for judgment is out, the record is to be stamped with a double half crown stamp, costs *de incremento* taxed by the master, the judgment then entered of record, and such execution as is proper sued out.

If either of the parties die, execution cannot be taken out on the judgment, till a *sci. fac.* is sued out and judgment thereon obtained. Stat. 8 & 9 Wm. 3. cap. 10.

If no execution be sued out within a year, the judgment must be revived by *sci. fac.* directed into the county where the original action was brought.

If a *fi. fac. ca. fa.* or *elegit* be taken out within the year and returned and awarded on the roll the same may be continued from term to term to the time of the execution thereof, although after the year, and be as effectual as if judgment had been revived by *seire facias*.

If

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If the defendant brings a writ of error, and delays the plaintiff for a year, and then is nonsuited, execution may be taken out without a *scire facias*.

When to move in arrest of judgment.

By note on rule Hilary 2 Geo. 2. If there be any irregularity in the process or proceedings before or after judgment, it behoves the defendant's attorney to apply to the court as soon as the irregularity happens, for in many instances where the defendant has lain by and let the plaintiff proceed, and be at great expence, the court has refused to assist the defendant.

When judgment must be revived by scire facias if no execution within a year.

By note on rule Easter, 5 Geo. 2. If no execution be sued out within a year, the judgment must be revived by *scire facias* directed into the county where the original action was brought.

If a *fi. fa. cā. fa.* or *elegit* be taken out within the year and returned and awarded on the roll, the same may be continued from term to term to the time of the execution thereof, altho' after the year, and be as effectual as if judgment had been revived by *scire facias*.

If the defendant brings a writ of error and delays the plaintiff for a year and then is nonsuited, execution may be taken out without a *scire facias*.

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J U R O R S and J U R Y.

King's Bench.

Three shillings and four-pence to be allowed each juror lying out one night, for diet besides his lodging.

BY rule, Mich. 1654. *sect. 19.* **IT IS ORDERED** by the court, that a jury lying out one night after a privy verdict delivered, there be allowed for the whole diet of each jurymen that night, no more than 3*s.* 4*d.* a-piece, and for two tipstaffs and one cryer or usher, to each of them no more than 2*s.* ordinary besides the charges of the jurors lodging.

Sheriffs to give sufficient summons to jurors for preventing tales.

By rule, Easter, 1651. **IT IS ORDERED** by the court, That all sheriffs do on the return of every *venire facias*, cause sufficient summons to be given unto all jurymen that are by them returned upon any juries, for the preventing of tales.

AND IT IS LIKEWISE ORDERED, That all attorneys do deliver unto the sheriffs of all counties of England within forty miles of London, all old *distingas's* within eight days after the end of Hilary and Trinity term, or else none shall be received, and that all sheriffs do cause sufficient summons to be given to all jurymen in those old *distingas's* a week before the *assizes* at least.

On

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On trials at bar, the secondary to name forty jurors, and the attorneys of each side to strike out twelve.

By rule, Trin. 8 Wm. 3. **IT IS ORDERED** by the court, That upon any reference by the court here made to the secondary of this court to return any jury or to name *forty-eight* sufficient jurors (to try any issue here at the bar) in the presence of the attorneys of both parties, if the attorney of one side shall make default to appear before the said secondary at the time by him appointed for the naming of the jurors aforesaid, or to strike out *twelve* of either part, in such case the said secondary shall name the jury aforesaid in the absence of the attorney, shall make default thereupon, and shall strike out of the said *forty-eight* jurors *twelve* on the behalf of either party and the rest of the jurors shall be returned by the sheriff to try the issue.

Note. Formerly the secondary and under sheriff (who attends with the book of the freeholder's names) had each a guinea a-side from the plaintiff and defendant, but since *stat. 3 Geo. 2. cap. 25.* the whole charge lies on the party applying for a special jury.

MARSHAL

MARSHAL of the KING'S BENCH PRISON.

King's Bench.

To suffer none in his custody or within the rules, to go out thereof.

BY rule, 28 Car. 2. **IT IS ORDERED** by the court, That the marshal of the *Marshalsea* of this court for the time being, shall not permit any person whatsoever remaining in his custody on any action, or in execution, or for any contempt whatsoever, detained within the said prison, or within the liberty of the rules of the said prison, to go out of the said prison or the liberty thereof, without a special rule of this court in that behalf had and obtained upon the peril that may ensue.

Fees to be taken by the Marshal of the prisoners in his custody.

December 17, 1730, 4 Geo. 2.

Surry, } **A** TABLE of Fees to wit. } to be taken by the marshal of the King's Bench prison in the county of Surry from any prisoner or prisoners commitment, or coming into goal, or chamber rent there, or discharged from thence in any civil action settled and established the 17th of December, in the 4th year of the reign of his Majesty King George the second, *Anno Dom.* 1730, pursuant to a late act for the relief of debtors with respect to imprisonment of their persons. viz.

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Fees to be taken by the warden of prisoners in his custody.

A TABLE of Fees to be taken by the warden of the prison of the Fleet, for any prisoner or prisoners commitment, or coming into goal, or chamber rent there, or discharged from thence in any civil action, settled and established the 19th of January, in the third year of the reign of his Majesty King George second, *Anno Dom.* 1729, pursuant to an act of parliament lately made, intituled, "An act for the relief of debtors in respect to the imprisonment of their persons."

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Common Pleas.

I. To the marshal for every prisoner committed on any civil action, s. d.
4 8

II. To the turnkey on the master's side - 1 6

III. To the marshal on the discharge of every such prisoner, - 7 4

IV. To the deputy marshal on the discharge of one or more actions executions or other charge and no further fee, tho' there be never so many actions, - 4 0

V. To the clerk of the papers for the first action on the discharge, - 3 0

VI. To the clerk of the papers for every action, execution or other charge, to be paid on the discharge, - 0 4

VII. To the deputy marshal on the commitment of a prisoner in court, or at a judge's chamber in any civil action, if carried to the *King's Bench* prison, - 1 0

VIII. To the clerk of the papers for the same, 1 0

IX. To the deputy marshal for a surrender in discharge of bail, be

there

Every prisoner charged with one or more actions, (who at his own desire shall go on the master's side) to pay to the warden for a commitment fee, £. s. d.
1 6 8

Every prisoner charged with one or more actions, (who shall go on the common side) not being entitled to partake of the poor box, to pay, 0 13 4

Every prisoner to pay for his discharge, 0 7 4

Every such prisoner on the master's side, who at his own desire shall have a bed to himself, to pay for chamber room, use of bed, bedding and sheets, to pay to the warden *per week*, 0 2 6

If two in a bed, and no more, for chamber room, use of bed, bedding and sheets, each to pay to the warden *per week*, 0 1 3

If the prisoner finds his own bed and bedding and sheets, (which the warden

is

King's Bench.

	s.	d.
there never so many actions, -	1	0
X. To the clerk of the papers for each action on such surrender, -	0	6
XI. To each of the four tipstiffs, -	2	6
For each prisoner committed by the court, and carried to the King's Bench prison, in the whole, -	10	0
XII. To the tipstaff that carries any prisoner committed at a judges chambers to the said prison, -	6	0
XIII. To the marshal for the use of the chamber, bed, bedding and sheets, for each prisoner if provided by the goaler at the prisoner's request, for the first night on the common side of the said prison, -	0	6
XIV. For the like use every night the prisoner remains in custody after the first, -	0	1½
XV. If two lie in a bed, one penny each, -	0	2
XVI. For the like use of every prisoner that goes on the master's side, the first night, -	0	6
XVII.		

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	£.	s.	d.
is in no sort to hinder him of) then he shall pay for chamber room <i>per week</i> , -	0	1	3
If there be two prisoners in one bed, finding their own bed, bedding and sheets, then each of them to pay to the warden <i>per week</i> , -	0	0	7½
Every prisoner not being entitled to partake of the poor's box, to pay to the porter or goaler, now called turnkeys on his commitment, -	0	2	0
Every prisoner on a commitment upon a surrender at a judge's chamber, to pay the tipstaff, -	0	6	8
Every prisoner on a commitment on a <i>habeas corpus</i> at a judge's chambers to pay to the tipstaff, -	0	4	3
Every prisoner on a commitment in court, to pay to the tipstaff, -	0	7	6
No other fee for any prisoner for the use of chamber, bed, bedding or sheets or on commitment or discharge of any prisoner in any civil action, nor any commitment fee to be taken of any prisoner entitled to partake			

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XVII. For the like every
night after the first, s. d.
o 3

XVIII. If two lie in a
bed, two-pence each, o 4

No other fee for the use of cham-
ber, bed, bedding, or sheets, on
the commitment, or discharge
of any prisoner, on any civil
action.

RULES, for the better government
of the King's Bench prison

BY rule, Mich. 3 Geo. 2. *IT IS*
BORDERED by the court,
That for the time to come, the
several orders or rules hereunder
wrote, and established, pursuant to
an act of parliament, made and
published in the second year of
the reign of our Lord George the
second, now King of Great
Britain, &c. intituled, "An act
for the relief of debtors, with respect
to the imprisonment of their persons,"
be well, strictly, and truly ob-
served and kept, as well by the
marshal of the *Marshalsea* of this
court, and all his officers and ser-
vants, as by all prisoners who now
are, or at any time hereafter shall
be, committed to the custody of
the said marshal.

AND IT IS FURTHER OR-
DERED, That this rule, with
the aforesaid several orders or
rules here following wrote, be
fixed in the most public place
within the prison of this court,
commonly called the *King's*
Bench prison, for the use, benefit,
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partake of the poor's box, nor
any chamber rent to be taken
of any prisoner on the com-
mon side.

RULES, for the better government
of the Fleet prison.

BY rule, Hil. 3 Geo. 2. *IT IS*
BORDERED by the court,
That all and singular the orders
or rules hereunder, wrote and
established, pursuant to an act of
parliament, made and published
in the second year of the reign of
our said Lord the King, intituled,
"An act for the relief of debtors,
with respect to the imprisonment of
their persons," be well, strictly, and
truly observed and kept, as well
by the warden of the prison of
our Lord the King of the *Fleet*,
and all his officers and servants,
as by all prisoners who now are,
or at any time hereafter shall be,
committed to the custody of the
said warden.

AND IT IS FURTHER OR-
DERED, That this rule, with all
and every the rules and orders
aforesaid, shall be fixed up in the
hall of the said prison, for the use,
benefit, and inspection of the
prisoners detained in the aforesaid
prison.

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King's Bench.

and inspection of the prisoners within the aforesaid prison.

RULES and ORDERS, for the better government of the King's Bench prison, made and signed the 25th of November, 1729.

I. *That* the marshal of the *Marshalsea* of this court do cause a pair of stocks to be kept up in the prison, (as has been anciently practised) for the punishment of such prisoners as shall blaspheme the name of God, be guilty of swearing, or behave themselves in a disorderly manner.

II. *That* the said marshal be, and is hereby strictly enjoined, not to make use of any illegal means of confinement of any prisoner in his custody, upon any pretence whatsoever; nor to confine any prisoner in the hole or room, commonly called the strong room, or any other unusual place of restraint; nor make use of any other extraordinary means or methods for the confinement of any prisoner, unless such prisoner shall have been found actually attempting or endeavouring to break the prison, with an intent to escape out of the custody of the said marshal: and every prisoner so confined shall have liberty to appeal to this court in term time, or to the Lord Chief Justice, or to any other judge of the said court, in time of vacation for redress.

III. *That*

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CONSTITUTIONS and ORDERS; renewed and established, touching the government of the *Fleet* prison, by Sir Robert Catlyn Knight, Chief Justice of the *King's Bench*; Sir Wm. Cordel Knight, master of the *Rolls*; Sir James Dyer Knight, Chief Justice of the *Common Pleas*; Sir Edward Saunders, Knight, Chief Baron of the *Exchequer*, and others, by virtue of a commission under the great seal of *England*, bearing date the 3d day of *June*, in the third year of the reign of *Queen Eliz.*; and afterwards revived and exemplified under the great seal, the first day of *Feb.* in the 37th year of the same reign; and again declared and established as rules and orders by which the said prison of the *Fleet* should be governed, by letters patent, granted to Sir *Jeremy Whicheot*, of the office of warden of the *Fleet*, in the 19th year of the reign of *King Charles the second*.

I. *That* it may be lawful to the said warden or his deputy to appoint so many of the household servants, as to either of them shall seem good, to open and shut the two outer gates of the *Fleet*, at such hours as the gates of *Ludgate* and *Newgate* are accustomed to be opened and shut, and the said persons to carry in their hands halberts, bills, or any other

King's Bench.

III. *That* the said marshal do not presume to sue, or procure to be sued out, any writ of *habeas corpus* to remove any prisoner from the prison of the *King's Bench* to the prison of the *Fleet*.

IV. *That* the said marshal do not presume to turn any prisoner back from the common side to the master's side, without giving reasonable cause, giving such prisoner *three days* notice of such his intention to remove him; during which time the said prisoner shall have liberty to appeal to any judge of this court against such intended removal, in order to prevent the same; pending which appeal, the said prisoner shall be allowed his daily subsistence as before; and in the mean time, his share of all dividends and other advantages shall be reserved till such appeal shall be determined.

V. *That* in case any prisoner die within the said prison, that the said marshal shall forthwith give notice to the coroner, in order that he may inquire according to law how such prisoner came by his death.

VI. *That* the said marshal do take effectual care, that no garnish or other exaction be extorted from any prisoner or prisoners under his custody, and do also take proper care that no prisoner or prisoners be deprived of his or their share, dues and dividends, on any pretence whatsoever.

VII. *That* the said marshal do take effectual care, that all and every

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other weapon, as shall seem good unto the said warden or deputy, within his precincts or liberty.

II. *That* it is and shall be lawful to the said warden and his deputy to take order, from time to time, that no person coming there do carry any weapon further than the porter's lodge there, be he stranger or other, unless they be licensed so to do by the discretion of such as the same warden shall appoint to keep the gate there.

III. *That* it may lawful for the said warden or his deputy, and so many of his household as shall be thought needful, to keep watch in harness, or otherwise, within his precinct, at all times as he shall see cause, for his better safeguard, if he shall suspect any prisoner within his custody to intend to make an escape.

IV. *That* it may be lawful for the said warden to take order at all times for such money as shall be gathered at the box, or otherwise generously given to poor men there, for the distribution thereof amongst them, if any contention shall arise; and that the said poor men shall always keep one key of the said box, and another key to be at the warden's appointment.

ORDERS, made by the Right Honourable Sir Edward Herbert Knight, Lord Chief Justice of his Majesty's court of Common Pleas at Westminster, and the rest of the Justices of the

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King's Bench.

every prisoner and prisoners, detained in the *King's Bench* prison, be permitted and suffered, at his, her, and their will and pleasure, to send for and have any beer, ale, victuals, or other necessary food, from what place they please, and also have and use such bedding, linen, and other things, as he, she, or they, shall think fit, without purloining or detaining the same, or any part thereof; or enforcing or requiring him, her, or them, to pay for the having or using thereof, or putting any manner of restraint or difficulty on him, her, or them, in using thereof, or relating thereto, pursuant to the several statutes in that case made and provided.

VIII. *That* the said marshal do cause a table of fees, as the same shall be settled and confirmed, in pursuance of an act of parliament, made in the second year of his present Majesty's reign, intituled, "*An act for relief of debtors, with respect to the imprisonment of their persons*;" and also a table of these rules, together with a list or table of all gifts, legacies and bequests, for the benefit of the prisoners in the said prison, fairly written in a plain and legible hand, to be hung up in some open and public room or place in the said prison, there to remain and be resorted to by every prisoner as occasion shall require, without fee or reward; pursuant to the directions of the said act.

IX. *That* the said marshal do use his utmost endeavour, by all fair

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the said court, Friday, the 27th day of February, Anno Domini, 1687, concerning his Majesty's prison of the Fleet.

V. *If* the prisoners on the master's side refuse or be not able to pay their chamber-rent, then, and in such case, the warden has liberty to turn them out of his or her chamber into the wards; but no prisoner whatsoever to be confined under the pretence of non-payment of chamber rent; but all of them to have liberty of walking in the fore-yard, hall, and cellar of the house, in the day-time, without interruption; the ward gates in the day time to stand constantly open, and to be opened, viz. at five o'clock in the morning in the summer, and at seven o'clock in the winter.

And the said Justices *DO FURTHER ORDER*, That the warden shall be at liberty to shut the ward gates at nine o'clock at night in the winter time, and ten o'clock in the summer, if he so think fit; provided he keep a watchman constantly to attend there, to let out and in such persons as shall have occasion to go to the necessary-house, they returning as soon as he or she has done there.

VI. *That* the warden shall not for the future detain or imbezzle any prisoner's goods, but that the said warden has liberty to detain the person of such prisoner or prisoners, after they are discharged by their creditors, until all lawful fees and duties shall be fully paid and satisfied.

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fair and legal methods, to prevent escapes; and that the marshal and all officers under him, do treat the several prisoners under his care with the utmost tenderness and humanity, as far as can be consistent with the safe custody of such prisoners; and that neither the said marshal, nor any officer or servant employed by him, do demand, take or receive, directly or indirectly, of any prisoner or prisoners for debt, any other or greater fee or fees whatsoever, for his, her, or their commitment, chamber rent, release or discharge, than what shall be mentioned and allowed in such list or table of fees, so to be hung up as aforesaid.

X. *That* the turnkeys of the said prison do diligently attend at the gate or door of the said prison, as the duty of their office requires; and do admit all such persons to have access to any of the prisoners, as by law are entitled thereto.

XI. *That* no cellar-man, turnkey, or other officer or servant of the marshal whatsoever, shall have, or pretend to have, any share or part in the charities belonging to the prisoners, or bear any office in the said prison which may entitle him to any power in the disposition or receipt of the said charities.

XII. *That* the chapel be continued in the prison aforesaid, and kept in good repair, and that the chaplain do constantly attend and perform divine service, and administer

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VII. *That* the warden shall, with all convenient speed, make and provide a confined room or dungeon in the wards, as it was before the great fire of London, for the confinement of persons endeavouring to make their escape, or guilty of any other great misdemeanour, that the general quietness and liberty of the rest of their fellow prisoners may not be restrained or suffer thereby.

And the persons whose names are hereunto subscribed, having reviewed and considered the said rules and orders, and being informed, that a confined room was provided according to the said last mentioned order, and that the same is boarded, wholesome, and dry, **DO ORDER AND DECLARE**, That the rules and orders before mentioned shall continue to be rules and orders for the better government of the *Fleet* prison, and be observed accordingly.

And whereas some further regulations are proper and necessary to be made, for the better government of the said prison, the persons whose names are hereunto subscribed **DO FURTHER ORDER**,

VIII. *That* the warden of the *Fleet* do keep the chapel of the *Fleet* in good repair, and take care that divine service be performed, and the sacrament of the Lord's supper administered therein, at the usual and proper times, according to the rites and ceremonies of the church of *England*; and

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minister the sacraments therein, at the usual and proper times, according to the rites and ceremonies of the church of *England*.

XIII. *That* no prisoner wrong or abuse another, on pain of being punished by setting him in the stocks, for such time as the marshal of this court, with the consent of the steward and assistants, or any two of them, shall think proper.

XIV. *That* the room, commonly called The dining room, be reserved and kept in good repair, for the use and benefit of the prisoners, for the exercise of devotion, or for conversation; and that a fire be kept therein, as often as the rigour of the season shall require; and that the two rooms under the dining room be reserved for the use of such prisoners as shall be afflicted with any disease, or other infirmity, that may require such accommodation.

XV. *That* every prisoner who shall make oath before one of the Judges of this court, or a commissioner empowered by this court, or one of the Justices of the peace for the county of *Surry*, That he or she cannot command *five pounds*, and cannot subsist without the assistance of the charities belonging to the common side, shall immediately be admitted to the said common side, and be capable of being elected into all offices, and entitled to all shares, dividends, and profits, belonging to the same.

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and all prisoners are required to attend at the times aforesaid, and not to absent themselves from the said chapel without reasonable cause.

IX. *And it is further ordered,* That no chaplain of the *Fleet*, or any clergyman, being a prisoner within the walls or rules of the *Fleet*, do presume to marry any person without licence within the prison or rules of the *Fleet*; and that the warden, and his officers, do use their utmost diligence to prevent all such marriages.

X. *That* the warden do cause the stocks to be kept up in the said prison, (as has been anciently practised) for the punishment of such prisoners as shall blaspheme the name of God, being guilty of prophane cursing or swearing, or shall behave themselves in a disorderly manner.

XI. *That* no prisoner do take possession of any chamber within the prison but with the consent of the warden or his deputy; or pull down any partition, or make any other material alteration there, without the consent of the warden or his deputy; but that the disposal and appointment of the chambers or rooms within the said prison be in the warden or his deputy only; yet so as neither of them do turn any prisoner out of possession who shall be rightfully possessed of a chamber, without reasonable cause; and that every prisoner, on his or her discharge, do deliver over to the warden, his deputy or chamberlain,

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XVI. *That* no person committed for any criminal matter shall have any vote or suffrage in the electing a steward, or other officer of the common side, nor shall receive any share of the charities belonging to the said prison, other than his share of such profits and advantages, as shall arise from the baskets.

XVII. *That* every prisoner shall be admitted to lodge in a cabin, within the respective ward to which he or she shall belong, without fee or reward.

XVIII. *That* every prisoner shall be capable of being chosen in his turn an assistant, and be entitled to such allowances, and other advantages, which by the usage of the said prison, such assistants have heretofore usually received and enjoyed.

XIX. *That* the seal belonging to the common side of the said prison be kept by the master of the *King's Bench* office, (as of late it has been) and that the said seal be not affixed to any receipt, or other instrument, till the same be approved, and signed by the marshal, with the consent of the prisoners of the said common side, signified under the hand of their steward and assistants.

XX. *That* if any prisoner on the common side of the said prison be charged with one action only, and such action be super-sededable, that the said action be superseded with the money belonging to the prisoners of the said common

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berlain, the key of his chamber, and all the warden's furniture therein.

XII. *That* the warden, or his deputy, may turn any prisoner out of his chamber to the common side that shall refuse or neglect to pay his or her chamber rent for the space of *three months*; and that the warden, or his deputy, shall, in such case, cause an inventory to be made of the prisoner's goods and effects, (if any) signed by two witnesses, and shall immediately deliver such goods and effects to such prisoner; but the warden may still detain the person of such prisoner, tho' discharged by the plaintiff, or in any other manner, until his arrears of chamber rent shall be fully satisfied and paid.

XIII. *That* no prisoner, or other person, shall keep any public room within the said prison for selling victuals, wine, brandy, punch, beer, ale, or other liquor, without leave from the warden, or his deputy; and if any prisoner or prisoners shall offend in the premises, it shall be lawful for the warden, or his deputy, to turn him, her, or them, out of their room or rooms to the common side; and the warden and his deputy are hereby required to take care that good order be kept in such public room or rooms as shall be allowed by either of them to be used, as aforesaid.

XIV. *That* the warden do take effectual care that every prisoner committed to his custody be

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common side, by their consent, signified under the hands of their steward and assistants, and signed by the marshal; but in case such prisoner be charged with more than one action, such actions shall not be superseded with the money belonging to the said prisoners, unless an order for that purpose be obtained on application to this court in term time, or to the Lord Chief Justice, or to any other Judges of the court in vacation: and that no clerk to any of the Judges of this court shall demand or take any fee or reward, on account of superseding any such action or actions with the said prisoners money, or for any matter or thing relating thereunto.

XXI. *That* particuler care be taken of all prisoners of the common side who at any time shall happen to be sick, and that all proper necessities shall be provided for them by the steward and assistants, and that they be reimbursed out of the first county money.

XXII. *That* whatsoever debts are reasonably contracted by the steward and assistants, with the concurrence of the marshal, and master of the *King's Bench* office, for the necessary support of the poor prisoners, the same shall be entered by the steward and assistants for the time being in their house books, and be paid out of the next dividend.

XXIII. *That* no money shall be allowed to the steward and assistants

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be conveyed to the prison of the *Fleet*, without being carried to any public, victualling, or drinking house, or the private house of any tipstaff, officer, or minister of the *Fleet*; or of any tenant or relation of his, without the free and voluntary consent of the person or persons so in custody; and that no garnish or money shall be extorted by any prisoner or prisoners from any person committed, for his coming into the said prison.

XV. *That* the warden do cause a table of the gifts and bequests made for the benefit of the prisoners of the *Fleet*, expressing the particular purposes for which the same are given, to be fairly writ in a plain and legible hand, to be hung up in the hall of the said prison; and that the warden take care that no prisoner or prisoners be defrauded of his, her, or their shares, dues, or dividends of the charities so given; and that no cellar-man, turnkey, or other officer or servant of the warden, shall have any share or part in any charity given to the prisoners; or bear any office in the said prison, which may entitle him to any power in the receipt or disposition of such charity.

XVI. *That* every prisoner who shall make oath before one of the Judges of the court from whence the process issued on which he or she shall be taken or charged, or before a commissioner empowered by such court, that he or she is not worth 5 $\text{\textit{s}}$. and cannot

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ants on pretence of their sitting on house business, or adjusting differences between prisoner and prisoner.

XXIV. *That* any prisoner that comes into the said prison after the *first* day of *Easter term*, shall have but one quarter of the *Midsummer* dividend.

XXV. *That* all the money brought to the prison by the basket-men and their boxes, as also such money as is brought for the prisoners use and relief by the boxes which come in at *Christmas*, *Easter*, and *Whitsuntide*, be immediately divided to each prisoner in due shares and proportions, making the basket-men such reasonable satisfaction for their trouble, as has been heretofore usually allowed.

XXVI. *That* in case the said marshal, in aid of the said steward and assistants, shall advance any money for superseding any action or actions against any prisoner or prisoners, as is herein before directed, the said marshal shall stand in the place of the said steward and assistants, and be accordingly reimbursed out of the next county money.

XXVII. *That* the prisoners of the common side have full power to make a free and open election of a steward every year; and that no prisoner who hath the liberty of the rules, or liberty to go out of the walls of the said prison, shall have any vote in the election of such steward, or any other officer of the common side

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not subsist without the charities belonging to the prisoners of the *Fleet*, shall immediately be admitted to all shares, dividends, and profits arising from such charities.

XVII. *That* two rooms, marked G. and 10, up the chapel stairs, shall be kept as an infirmary for the use of the prisoners on the common side, who shall fall sick of such diseases as shall require their being removed to prevent infection, or for necessary care and relief; and that no prisoner shall be obliged to lie in the same bed with a diseased person.

XVIII. *That* the warden shall keep the prison-house and windows in good and necessary repair, and keep the drains, bog-houses, and dunghills, as clean and free from stench and noisomeness as possible.

XIX. *That* when any prisoner dies within the said prison, the said warden shall forthwith give notice of such death to the coroner, that the said coroner may enquire according to law, how such prisoner came by his death; and that the said warden shall detain the body no longer than till the coroner's inquest have made their inquisition, which shall be done with all convenient speed; and immediately afterwards the dead body shall be delivered to the prisoner's friends or relations, if they desire it, without fee or reward.

XX. *That* the warden do not sue, or procure to be sued out,

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of the said prison. And that such steward so elected shall continue in the said office for the space of one year, unless removed upon application made to the said court in term time, or in time of vacation to one of the judges thereof.

XXVIII. *That* the steward of the common side of the *King's Bench* prison, do keep a book or register, wherein shall be entered a copy of the table of fees herein before directed to be hung up in the said prison, together with a copy of those rules and orders; and also a list of the several charities belonging to the said prison, for the benefit of the said prisoners. And that every prisoner have liberty at all convenient times to inspect the said book, and also the steward's accounts.

XXIX. *That* if any prisoner be wronged or abused by the steward and assistants, or any of them, of his or her rights and dues, that he or she complaining to the court in term time, or in time of vacation to the Lord Chief Justice, or to any of the judges of the court, or the marshal of the said court, shall (provided they prove the cause of their complaint to be true) have a reasonable allowance made them for their costs and charges upon the said complaints, to be paid out of the next dividends belonging to the steward and assistants, or such of them who shall appear to have wronged such person complaining; or if the complaint prove groundless, that the person complaining, do
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any writ of *habeas corpus*, to remove a prisoner from the prison of the *Fleet* to the prison of the *King's Bench*.

XXI. *That* the warden shall keep a book in which all commitments shall be fairly entered in the words of such commitments, within fourteen days after any prisoner shall be committed.

XXII. *That* the warden shall keep another book, containing the names of every prisoner actually brought into the *Fleet*, and taken into the house, with the name of the party at whose suit he shall be committed, and the time when the prisoner was brought to the *Fleet*, and received into the prison; specifying withal, the Court or Judge by whose authority he shall be committed.

XXIII. *That* every tipstaff, to whom any prisoner shall be delivered in custody at a Judge's chamber, shall keep a book containing the name of such prisoner, and the time when he was taken into custody, to be signed by such Judge's clerk; and such Judge's clerk shall keep another book, in which the like entry shall be made, signed by the tipstaff.

XXIV. *That* the warden shall keep a book, in which memorandums shall be entered of all declarations delivered to the turnkey, or porter, against any prisoner in the *Fleet* prison, containing the names of the parties, the cause of the action, and the time
when

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in like manner make satisfaction for such groundless complaint, out of his share of the next dividend.

XXX. *That* if any of the assistants, or the steward, shall mispend or waste, or by any other ways or means lavishly consume the house-money, the next steward or assistants, or any succeeding them, may call the former to account for the same; and upon plain proof of the aforesaid mispend money, cause all the dividend or dividends, as well at the grate as otherwise, to be taken, stopt and kept, for the reparation of the injury done to the prisoners in general; and to be put into the house-box until equally divided to each prisoner in their due shares and proportion.

XXXI. *That* the steward and assistants do cause these orders to be read every third *Monday* at the basket, being the usual day for chusing the officers and settling the house accounts.

XXXII. *That* the marshal of this court, and all his officers and servants, and all prisoners within the said prison, do strictly and punctually observe and keep the several rules, orders, and directions herein before-mentioned, under pain of incurring the utmost punishment that by law can be justly inflicted upon them respectively.

XXXIII. *Lastly*, It is hereby strictly ordered and enjoined, that no clerk, officer, or servant

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when such declaration shall be delivered.

XXV. *That* the warden shall keep a book in which all discharges of prisoners shall be fairly entered, which entry shall specify how such discharge was made, whether by the plaintiff, by *superfedeas*, or otherwise; and such entry shall be made within five days after every discharge.

XXVI. *That* the warden shall keep a book, in which every writ of *habeas corpus* upon which the prisoner shall not be committed or the custody altered, with the return of every such writ of *habeas corpus*, shall be fairly entered.

XXVII. *That* all the books before mentioned, except the tipstaff's book, shall be kept in the publick office of the clerk of the papers of the *Fleet*, and that all persons shall have liberty to resort to them, and to take copies, as there shall be occasion.

XXVIII. *That* no clerk, officer or servant whatsoever, belonging to any Judge of this court, shall directly or indirectly demand, receive or take, any gratuity, fee or reward, for or by reason of any petition, complaint, or application, that shall be made by any prisoner or prisoners of the said prison, pursuant to, or founded upon any of the rules and orders herein before mentioned, or concerning any misgovernment in the *Fleet*.

☞ B b 2 XXIX.

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whatsoever, belonging to any Judge of this court, shall directly or indirectly demand, receive or take, any gratuity, fee or reward whatsoever, for or by reason of any petition, complaint, or application that shall be made to any Judge of this court, by any prisoner or prisoners of the said prison, pursuant to, or founded upon any of the rules and orders herein before mentioned.

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XXIX. *Lastly*, That the said warden and his officers, do treat the several prisoners in his custody with all tenderness and humanity; and that such prisoners do behave themselves towards the warden with that submission and regard which the law requires.

M O N E Y paid into C O U R T.

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B*Y rule, Hil. 5 Jac. 1. IT IS ORDERED* by the court, in full court, That every party at whose request any sums of money shall be brought into court, here to be kept, shall pay to the *secondary* of the chief clerk of the Lord the King, here for the time being, for the keeping of such sum of money, 20 s. for every 100 l. and so according to that rate shall be paid for every greater or less sum, for the keeping thereof, as well for a sum of money to be brought in, in form aforesaid, as for a sum of money now remaining in court; and for a sum of money under 10 l. the sum of 2 s. shall be paid for such money, as used to be paid formerly.

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NE RECIPIATUR.

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When it may be entered.

BY rule, Hil. 15 & 16 Car. 2. **IT IS ORDERED** by the court, That issues joined of any preceding term shall be tried within the first week of every term, and that the *custos brevium* of this court shall not seal any record of *nisi prius* of such issues, after one week of every term, without the special licence of the Chief Justice of this court.

AND IT IS FURTHER ORDERED, That unless the causes to be tried at *London* and *Middlesex* be entered with the Chief Justice of this court, by the space of *two days* before the sittings upon which such causes are to be tried, the marshal may enter a *ne recipiatur* at the request of the defendant or his attorney.

When at the sittings after term.

By rule, Mich. 4 Ann. **IT IS ORDERED** by the court, That if the defendant in any action in *London* or *Middlesex*, and to be tried at the sittings of the Lord Chief Justice of this court, shall enter a *ne recipiatur*, and by reason thereof hinder the plaintiff that he cannot proceed at that sitting; that then it shall be lawful to the said plaintiff to proceed to trial in the said cause at the next sitting of the said Chief Justice, after the entering of the said *ne recipiatur*, upon notice given during the said first sitting.

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When it may be entered.

BY rule, Hil. 8 Geo. 1. **IT IS ORDERED**, That *ne recipiatur* shall be allowed to be entered for the sittings of *nisi prius* after every term, unless the records of *nisi prius* and writs be made up and brought into court on or before the days and sittings respectively.

When to be entered in *London* and *Middlesex*.

By rule, Easter, 1 Jac. 2. **IT IS ORDERED** by the Chief Justice of his Majesty's court of *Common Pleas*, That all attornies of the said court, that shall have any records of *nisi prius* to be tried before his Lordship in the *Guildhall London*, or at *Westminster-Hall*, shall enter the same in the marshal's book *two days* at the least, exclusive, before the day of trial; according to the ancient course; or in default thereof, a *ne recipiatur* may be entered.

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NON PROSS and NON SUIT.

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When it may be signed if plaintiff does not declare in two terms.

B*Y* note on rule Mich. 10 Geo. 2. On process out of this court, returnable at a day certain, if the defendant appear by his attorney, and file bail of the term wherein the process is returnable, and the plaintiff does not declare before the end of the term next following, a *non pross* may be signed without entering any rule to declare, or calling for a declaration; and the defendant shall have costs taxed as usual, under *stat. 13 Car. 2. cap. 2.*; and if the declaration should be tendered at any time after the end of the *second term*, and before the *non pross* is signed, the defendant is not bound to accept of it; but may sign his *non pross* at any time after the end of the *second term*.

Common Pleas.

When it may be signed if plaintiff does not declare in two terms.

B*Y* rule, Hil. 9 Ann. **IT IS ORDERED** by the court, That on all process returnable the first or any other return, in any term, the plaintiff shall have liberty to the end of the next ensuing term, to deliver his declaration to the defendants's attorney, or of leaving the same in the office; and the defendant's attorney having entered his appearance with the proper officer, as of that term in which the process is returnable; and at the end of the ensuing term, or in *four days* after the end thereof, having given a rule to declare in the proper office, and having called on the plaintiff's attorney or clerk in court, (if he can be found) the defendant, any time in the vacation of such ensuing term, after the rule for declaring is out, may sign his *non pross* for want of a declaration, and not afterwards; and the plaintiff shall not, without leave of the court, have any longer time to declare in than as above, other than the time to be limited by the defendant's rule, any rule or practice to the contrary thereof notwithstanding.

How

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Common Pleas.

How to be signed when the proceedings are by original.

By rule, Mich. 1654, sect. 15. That if the plaintiff declare not the *second term*, tho' the defendant give no rules, yet a *non-suit* may be declared the end of the *second term*, on a continuance over by him by *dies datus*, but not the *third term* or after.

By note on rule Mich. 10 Geo. 2. If the proceedings are by original, the defendant must before the end of the *second term*, or within *four days* after entering a rule for the plaintiff to declare, demand a declaration in writing; and if the plaintiff does not declare before the rule is out, the defendant may at any time after the *essoign* day of the next term, sign a *non profs*, but not afterwards. The practice in this case being the same as in *C. B.*

On removal by habeas corpus, the plaintiff must declare in two terms after the return of the writ.

By note on rule Mich. 16 Car. 2. Where a cause is removed by *habeas corpus*, the plaintiff must begin *de novo*, and declare in *two terms* after the return; for the record is not removed on a writ of *habeas corpus*, as it is on a writ of *certiorari*. Salk. 352. Where the defendant removes his cause, he cannot *non profs* the plaintiff for want of a declaration.

A non

Writs

King's Bench.

A non profs may be signed for not entering the issue.

By note on rule Mich. 4 Ann. The plaintiff must enter his issue, if the action be laid in *London* or *Middlesex*, and bring the record into the office, within *four days* after notice of the rule; if in the country, before the continuance-day of that term; or a *non profs* may be signed and entered.

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Writs of error may be non profs'd for not perfecting bail.

By rule, Mich. 6 Geo. 2. IT IS ORDERED by the court, That in all cases where bail shall be filed on *writs of error*, such bail shall likewise be perfected within *four days* after exception taken thereto; or in default thereof, the clerk of the errors of this court, shall *non profs* such writs of error.

In what cases deeds must be shewn before a nonsuit.

By rule, Mich. 1654, sect. 15. IT IS ORDERED by the court, That when a deed, will, or letters of administration, are to be shewn in a declaration, the attorney of the plaintiff delivering a declaration with a subscription that the defendant shall not be compelled to plead till the same be shewn; no judgment by *nihil dicit* to be entered against the defendant till the same shewn; nor any *nonsuit* on the plaintiff, if he shew the same before the end of the next term.

NOTICE.

NOTICE.

King's Bench.

Notices to be in writing.

B*Y* note on rule, Mich. 4 Ann. That all notices be in writing.

Notice of bail.

By rule, Mich. 16 Car. 2. **IT IS ORDERED** by the court, That every attorney of this court, who shall put in any special bail, before any Justice of this court, *de bene esse*, on a *cepi corpus*, shall give notice thereof without delay, to the plaintiff or his attorney.

Notice of bail on habeas corpus.

By rule, Mich. 16 Car. 2. **IT IS ORDERED** by the court, That every attorney of this court, who shall put in any special bail before any Justice of this court, *de bene esse*, on any writ of *habeas corpus*, shall give notice thereof without delay, to the plaintiff or his attorney.

Notice of declaration left in the office.

By rule, Trin. 1 Geo. 2. **IT IS ORDERED** by the court, That from and after the last day of this present term, in all causes where a copy of the process of this court is served on any defendant or

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Notices to be in writing.

The same practice as in *K. B.*

Notice of bail.

The same practice as in *K. B.*

Notice of bail on habeas corpus.

The same practice as in *K. B.*

Notice of declaration left in the office.

The same practice as in *K. B.*

King's Bench.

defendants, and an appearance is entered, or common bail filed, for such defendant or defendants, by the plaintiff's attorney, pursuant to the said act, the plaintiff's attorney in such case shall leave a copy of the declaration in the office with the proper officer appointed for that purpose, and likewise give notice thereof to the defendant or defendants, by delivering an *English* notice, written in the secretary hand, to such defendant or defendants, by leaving the same at the last or most usual place of abode of such defendant or defendants; in which notice shall be likewise expressed the nature of the action.

Notice to appear and plead.

By rule, *Trin. 5 & 6 Geo. 2.*
IT IS ORDERED by the court, That on all process to be sued out of this court, returnable the first or second return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within twenty miles of *London*, the declaration shall be delivered, with notice to plead within four days after the delivery thereof, and the defendant shall plead within the same four days, without any *imparlance*; and in case the plaintiff declares in any other county, or the defendant lives above above twenty miles from *London*, the declaration shall be delivered, with notice to plead within eight days after the delivery thereof, and the defendant shall plead within the said

*Common Pleas.**Notice to appear and plead.*

The same practice as in *K. B.*

King's Bench.

eight days without any *imparlance*; and on default of pleading as aforesaid, the plaintiff may sign his judgment; any rule of this court to the contrary notwithstanding.

By rule, *Mich. Geo. 2. IT IS ORDERED* by the court, That from and after the last day of this term, upon all procefs to be issued out of this court, returnable the first or second return of any term, where no affidavit shall be made and filed of the cause of action, pursuant to the late act of parliament, for preventing frivolous and vexatious arrests; the plaintiff may deliver the declaration *de bene esse*, at the return of such procefs, with notice to plead in eight days after the delivery thereof; and if the defendant doth not file common bail, and plead within the said eight days, the plaintiff having filed common bail for such defendant, according to the said act, may sign judgment for want of a plea, a rule to plead being duly entered.

AND IT IS FURTHER ORDERED, That from and after the last day of this term, upon all procefs to be issued and made returnable as aforesaid, where an affidavit shall be made and filed of the cause of action, pursuant to the said act, the declaration may be delivered *de bene esse*, at the return of such procefs, with notice to plead in four days after such delivery; if the action be laid in *London* or *Middlesex*, and the defendant lives within twenty miles of *London*; and in eight days, if



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the action is laid in any other county, or the defendant lives above twenty miles from *London*; and if the defendant puts in bail, and doth not plead within such time as is respectively before mentioned, judgment may be signed, a rule to plead being duly entered.

Notice to plead where four terms are elapsed.

By note on rule *Trin. 5 & 6 Geo.*
2. If four terms are elapsed after the declaration is delivered, the defendant shall have a whole term's notice to plead before judgment can be entered against him, or if a cause has continued four terms, without prosecution before issue joined, each party shall have a whole term's notice to reply, rejoin, &c. unless the cause has been staid by injunction or privilege.

Notice to reply.

By note on rule, *Trin. 5 & 6 Geo.*
2. The same time to reply when four terms are elapsed, as to plead.

Notice of trial.

By rule, *Mich. 4 Ann. IT IS ORDERED* by the court, That if the defendant in any action in *London* or *Middlesex*, and to be tried at the sittings of the Lord Chief Justice of this court, shall enter a *ne recipiatur*, and by reason thereof hinder the plaintiff that he cannot proceed at that sitting,

Common Pleas.

Notice to plead where four terms are elapsed.

The same practice as in *K. B.*

Notice to reply.

The same practice as in *K. B.*

Notice of trial.

The same practice as in *K. B.*

King's Bench.

sitting, that then it shall be lawful to the said plaintiff to proceed to trial in the said cause at the next sitting of the said Chief Justice, after the entering of the said *ne recipiatur*, upon notice given during the said first sittings.

By rule, Hil. 8 Geo. 1. IT IS ORDERED by the court, That in every case where the plaintiff shall conclude to the country upon the defendant's plea, and shall give notice of trial of the issue upon the paper-book as aforesaid, and thereupon the defendant, to hinder the trial of the issue shall demur in law, upon the replication or plea of the plaintiff, and the plaintiff shall join in such demurrer, and thereupon shall obtain judgment, the attorney for the defendant shall be obliged to accept of notice of executing a writ of inquiry of damages, from the time of notice of trial given upon the paper-book, as aforesaid.

Notice of countermand

By note on rule, Mich. 4 Ann. All notices of trial or executing enquiry, or countermands, ought to be in writing.

Notice of executing inquiry.

By note on rule, Mich. 4 Ann. The same practice as on notice of countermand.

By note on rule, Hil. 8 Geo. 1. IT IS ORDERED that the same notice

Notice of countermand

The same practice as in *K. B.*

Notice of executing inquiry

The same practice as in *K. B.*

King's Bench.

notice which was given for the trial of the issue, shall serve for the executing the writ of inquiry, but then the plaintiff ought to give notice of the hour and place for executing the same.

In notices to appear, the day of the return of the process to be inserted, though it be on a Sunday.

By rule, Hil. 7 Geo. 2. IT IS ORDERED, That in notices to appear, to be served upon defendants with copies of process, pursuant to the late act of parliament, the day of the return of such process must be inserted, although it happens to be upon a Sunday.

Notice to be given of motion to enlarge a rule for shewing cause, and affidavit made of such notice.

By rule, Mich. 2 Geo. 2. IT IS ORDERED, That attornies of this court are desired to take notice, that the court will enlarge no rule for shewing cause, unless notice be given of motion to enlarge such rule, and affidavit made of such notice. And likewise, that the court will not set aside any judgment for irregularity, unless motion be made to the court for that purpose, before a writ of inquiry executed.

The plaintiff's attorney to give timely notice of trials at bar.

By rule, Hil. 9 Ann. IT IS ORDERED by the court, That the attorney

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attorney for the plaintiff in every cause which in such case shall come be tried at the bar of the court, shall, before the *essoign* day of the term in which such cause shall be appointed to be tried, give notice to the chief prothonotary of this court, or his secondary, of the day on which such cause is to be tried, that the same (as is usual) may be put down in the court-book provided for that purpose. And in case such attorneys shall neglect so to do, that then, without motion and the special direction of this court, such cause shall not be tried that term; any precedent rule or practice to the contrary notwithstanding.

When eight days notice of trial inquiry must be given, and when fourteen days notice.

By rule, *Mich. 1654. sect. 21.* That notice of trials or inquiries in *London* or *Middlesex* (the defendant dwelling within forty miles of *London*) be eight days, exclusive of the day whereon notice is given.

That if the defendant live above forty miles distant from *London*, notice of such trials and inquiries in *London* or *Middlesex* be fourteen days, exclusive of the day of notice.

That in all issues to be tried by *nisi prius* in *London* or *Middlesex*, upon a record of a precedent term, the copy of the issue be brought to the clerk of the Treasury, for the ingrossing of the record,

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cord, four days at the least before the day of trial of such issue; and that all causes to be tried in *London* or *Middlesex* be entered into the marshal's book four days before the day of trial.

That eight days notice, exclusive, be given upon trials in the county, and upon writs of inquiry of damages, on writs of dower and waste, and all other inquiries of damages.

That if the plaintiff give notice of a trial, and he proceed not, the plaintiff not to take it down to trial again without new notice to be given, as is before expressed, unless by consent, or rule of court. But in *London* or *Middlesex*, if notice be given of a trial for one fitting, and the plaintiff be not provided to proceed; if he give notice before that fitting that he will try it the next fitting, that is to be held convenient notice.

That in case of such warning, and no proceedings, the defendant upon motion to have his cost of his former attendance, to be taxed by the prothonotary, unless the plaintiff gave the defendant warning convenient time, that he would not proceed; or shew cause, to be allowed by the court, in excuse of such costs.

After an imparlance of three terms, no judgment without a term's notice.

By rule, Mich. 1654. sect. 15.
That after any imparlance of three terms, without any calling for answer,

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answer, no judgment to be entered without a term's notice.

O F F I C E R S of the **C O U R T.**

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Officers of the court to attend their several offices, unless excused by the Chief Justice.

BY rule, Trin. 35 Hen. 7. **IT IS ORDERED** by the court, That every prothonotary, filacer, exigenter, King's clerk, and every other officer of the same place, such, and they and their predecessors have used to occupy their offices in their proper persons, and they or their deputies from henceforth attend upon their said offices in their places accustomed for the same, and occupy them in their proper persons, on pain of forfeiture and losing of their said offices. If ill, to be licensed by the Chief Justice.

Not to make or suffer any process or entry to be made in the name of any attorney put off the roll or not sworn.

By rule, Hil. 14 & 15 Car. 2. **IT IS ORDERED** by the court, That no officer of this court do make, or suffer to be made, any process or entry, in the name of any person not sworn an attorney, nor entered in the rolls of attorneys, or in the name of any person put out of the roll of attorneys, either as a discontinuer,

D d or

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To appear by the effoign day of the second return of every term.

BY rule, Mich. 1654. sect. 1. **IT IS ORDERED**, That all officers and attornies of this court, appear in person in this court, on or before the 14th day of Michaelmas term, and on or before the 7th day of every other term, on pain of 10s. for the first default, 20s. for the second default, and putting out of the roll on the third default. The appearance to be entered with the prothonotary, and the defaulters to be delivered to the court on oath (if required) within three days after the time appointed for appearance.

O R I G I N A L.

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The original to be shewn on tendering a declaration, on the reversal of an outlawry or a removal by habeas corpus.

BY Rule, Mich. 1654. sect. 12. **IT IS ORDERED** by the court, That if bail be given on reversal of an outlawry, or removal by habeas corpus, the original be shewn on tendering of the declaration, otherwise the bail are not liable, unless the party or his attorney will voluntarily appear,
or

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or take a declaration without shewing it.

The original to be sued forth before declaration delivered.

By rule, Mich. 30 Car. 2. **IT IS ORDERED** by the court, That for the future, no attorney for the plaintiff shall presume to deliver, or attorney for the defendant to receive, by himself or his agents, any declaration without an original proper to the cause of action first sued forth to warrant the same.

In real actions the original to be first taken out.

By rule, Mich. 15 Eliz. **IT IS ORDERED** by the court, That no attorney here prosecute or sue any foreign process, by original or other process, in any personal action, other than actions of debt only, but in the proper shire where the cause of suit shall grow and arise, without license of the court, on pain of forfeiture for his *first* offence 40 s. and disability and expulsion for his *second* offence.

D d 2 OUT-

O U T L A W R Y.

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No writ of error for reversing an outlawry to be allowed, unless some manifest error be shewn to the court or some of the Justices.

By rule, Trin. 24 Eliz. IT IS ORDERED by the court, That if any person (which from henceforth shall be outlawed in any action personal before appearance and judgment) do pursue any writ of error thereupon, the same writ of error shall not be allowed, nor any record removed, nor any writ *de non molestando*, or *superfedeas*, granted before some manifest error be shewed to the court, if it be in the term time, and if it be in the time of vacation, then to some of the justices, and by them allowed.

Writs of proclamation on exigents, to be carefully delivered and executed by the sheriff.

By rule, Mich. 1654. sect. 9. IT IS ORDERED, That according to the provision of *stat. 31 Eliz.* All attornies that sue out process of *exigent*, be careful that writs of proclamation be delivered, and the sheriff do take care duly to execute the same.

On reversing outlawries, an attorney on record to be present.

By rule, Mich. 1654 sect. 13. IT IS ORDERED, That he that
reverses

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reverses an outlawry have an attorney of record present, who must undertake an appearance to a new original, and such attorney shall be compelled to appear; and that the defendant or his attorney give notice to the plaintiff or his attorney of such reversal the same term, or in the vacation next after it.

Bail to be put in before the reversing any outlawry.

By rule, Mich. 12 Geo. 1. *IT IS ORDERED* by the court, That before allowance of any writ of error, or reversing of any outlawry, be had by plea, or otherwise, through or by want of any proclamation to be had or made according to the form of the statute in that case made and provided, after the *first* day of *November* in this present term, the defendant and defendants in the original action shall put in bail not only to appear and answer to the plaintiff in the former suit in a new action to be commenced by the said plaintiff for the cause mentioned in the first action, but also to testify the condemnation, if the plaintiff shall begin his suit before the end of two terms next after the following the writ of error, or otherwise according to the outlawry.

On

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On reverſing any outlawry, the defendant to pay only the uſual coſts of the exigent and the fine on the original writ.

By rule, Trin. 33 Car. 2. IT IS ORDERED, That no defendant who in and after the month of *St. Michael* next coming ſhall be outlawed, and who ſhall appear and reverſe the outlawry, ſhall on ſuch reverſal, pay for coſts to the plaintiff, any ſum of money not exceeding the uſual coſts of the *exigent* in this court, together with the fine to our Lord the King on the original writ, if any was paid; and that all further coſts ſhall be reſpited until the time of ſigning judgment for the plaintiff.

AND IT IS FURTHER ORDERED, That every defendant ſo outlawed, and reverſing ſuch outlawry, if the plaintiff ſhall not proceed thereupon within two terms next after notice of the reverſal thereof, ſhall have coſts to be taxed by the prothonotary.

Further coſts to be paid before the reverſing outlawries tranſcribed into the Exchequer.

By rule, Trin. 1 W. & M. IT IS ORDERED by the court, That where any outlawry ſhall be tranſcribed into this court, and proceſs made out thereupon, and afterwards ſuch outlawry ſhall be reverſed before any judgment ſhall be entered for removing the King's hands, and the party outlawed

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lawed restored to his possession, the prosecutor of such outlawry shall be paid such costs as shall be taxed by their Majesty's remembrancer, or his deputy, for the proceedings in this court.

No outlawry after the plaintiff's death or marriage to be reversed till appearance or bail, &c.

By rule, Trin. 2 Jac. 2. **IT IS ORDERED**, That no outlawry for the future, after the death of the plaintiff in the action, be reversed, without the defendant's appearance and putting in special bail (if the action so requires) to the executor or administrator of the plaintiff, or to the husband and wife, in case where the wife whilst a *feme sole* sued the defendant to an outlawry before marriage, provided that the plaintiff's attorney to the writ of *exigent* or *capias utlegatum*, do within fourteen days after notice to him given of the defendant's intention to reverse such outlawry, deliver the name or names of the executor or administrator of such plaintiff or plaintiffs deceased, to the proper prothonotary of this court.

No supersedeas after the return of the exigent to be allowed by any sheriff till costs be paid.

By rule, Mich. 17 Car. 2. **IT IS ORDERED**, That on every writ of *exigent* which shall be sued forth of this court, from and after this term, if a *supersedeas* be not put in thereunto, at or before the

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the return thereof, that no *superfedeas* shall by any sheriff or officer be allowed as an appearance to any such writ of *exigent*, until the defendant shall have paid unto the plaintiff or his attorney, or left in the court with one of the prothonotaries thereof, the full and just costs of suit, as he shall have been at in the suing forth of such writ of *exigent*, to be taxed by the prothonotary.

And that on reverfing of all and every outlawry, the party defendant which reverses the same, shall before the reversal thereof, or any *superfedeas* made thereunto, give special bail, if the sum of money or damage expressed in the original writ whereupon the *exigent* was awarded shall amount to the sum of 20 l. and the plaintiff or plaintiffs shall require the same, and pay to the plaintiff or plaintiffs, or his or their attorney, or leave in the court for him or them, his or their full and just costs of suit expended in the prosecution of the same, to be taxed as aforesaid.

Sheriffs not to enlarge persons on a capias utlegatum with a superfedeas.

By rule, Mich. 17 Car. 2. IT IS ORDERED by the court, That if any sheriff or officer whatsoever, shall set at liberty any person arrested on a *capias utlegatum* before judgment, without lawful *superfedeas* in that behalf first delivered unto him or them, that on affidavit thereof made and filed, every person offending

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fending therein, shall pay the sum of 40 s. to the party aggrieved or complaining, who shall have an attachment of course against such sheriff, officer, or party offending, for the payment of the same; and the party or parties so offending, shall likewise undergo such other punishments as by this court shall be thought fit.

No supersedeas to be issued, without bail.

By rule, Hil. 15 & 16 Car. 2. IT IS ORDERED by the court, That no such *supersedeas* be made or issued out of this court by any officer, clerk, attorney or minister of the same, without sufficient bail first taken according to law, and former orders and usages of this court, on pain of incurring the severest punishment which according to law and justice can be inflicted on the offenders in any of the premisses.

Under-sheriffs, &c. not to return a reddidit se where the defendant has not rendered himself.

By rule, Easter 24 Car. 2. IT IS ORDERED by the court, That no under sheriff or county-clerk of any county within this realm, nor any attorney or other minister of this court, shall return or cause to be returned on any writ of *exigi facias* issuing out of or returnable in this court, any false return of *reddidit se*, where in truth the defendant has not rendered himself to the sheriff.

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*No retraxit with the under-sheriff
till entered on the roll.*

By rule, Easter 24 Car. 2. IT IS ORDERED, That no clerk, attorney, or other minister of this court, shall enter or cause to be entered any *retraxit* with any under-sheriff, county-clerk or other minister aforesaid whatsoever, on any writ or writs of *exigi facias* issuing out of and returnable in this court, until the same *retraxit* be entered on the same roll on which the said *exigent* is awarded of that present term in which the same is returnable; and that no farther proceedings be in that cause, after the party outlawed by filing a new original, or by any other means or ways whatsoever, to deceive the King's Majesty of his seals, and the aforesaid officer of the *supersedeas* office of his just fees for making and signing of writs of *supersedeas quia improvide* to such writs of *exigent*, or any other officers of their just fees.

*The writ of supersedeas to be duly
signed and sealed.*

By rule, Easter 24 Car. 2. IT IS ORDERED, That no under-sheriff or county-clerk aforesaid, or other minister of the same court whatsoever, from and after the end of this present term, shall receive any writ of *supersedeas*, or allow any such writ on his or their book or books, file or files, until the same be duly signed by the proper officer of the said office, and also sealed,

No

King's Bench.

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No declaration to be delivered or received till a superedeas allowed.

By rule, Easter 24 Car. 2. IT IS ORDERED, That no attorney or other minister of this court, either for plaintiff or defendant, shall give or receive any copy or copies of declarations founded on any writ of *exigi facias*, until the King's Majesty's writ of *superedeas* be duly signed, sealed and allowed with the sheriff, under-sheriff or his lawful deputy, of the county where the *exigent* is laid.

Attornies to deliver writs of proclamation, and sheriffs duly to execute them.

By rule, Mich. 1654. sect. 6. IT IS ORDERED by the court, That according to the provision of statute of 31 Eliz. all attornies that sue out process of *exigent*, be careful that writs of proclamation be delivered, and the sheriffs do take care duly to execute the same.

A prisoner taken on a capias in process, not to be discharged till he hath given bond to appear.

By rule, Mich. 1654. sect. 6. IT IS ORDERED by the court, That according to the statute of the 23d year of Hen. 6. a prisoner taken on a *capias* in process, be not discharged till he hath given bond to appear, unless the plaintiff or his attorney shall consent to take an appearance without bail; and in such case, the warrant

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warrant of attorney to appear, to be subscribed or accepted by the defendant's attorney, and such warrant not to be revoked; and an attachment to be granted against the bailiff offending herein, or against the attorney refusing to appear or procure an appearance, having so subscribed or accepted.

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O Y E R.

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In what time to plead after oyer.

B*Y* note on rule Trin. 5 & 6 Geo. 2. If the plaintiff in his declaration sets forth a *profert in curia* of any deed, writing, letters of administration, or the like, the defendant may pray *oyer*, and must have a copy thereof delivered to him, on paying for the same after the rate of 4 d. *per sheet*, and also for the stamps; and shall have such time to plead after the delivery as he had when he demanded *oyer*.

So likewise if the defendant in his plea make a *profert* of any deed, &c. the plaintiff may pray *oyer*, and shall have a copy at the like rate, and the same time to reply as he had at the time of demanding *oyer*.

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Oyer to be demanded by a note in writing.

B*Y* rule, Mich. 1 Geo. 2. **IT IS ORDERED** by the court, That declarations, pleas, replications and other pleadings, and also oyer of writs, bonds and other deeds, shall be demanded by a note in writing.

Where deeds must be shewn, else no judgment.

By rule, Mich. 1654. sect. 15. **IT IS ORDERED** by the court, That when a deed, will, or letters of administration, are to be shewn in a declaration, the attorney of the plaintiff delivering a declaration with a subscription that the defendant shall not be compelled to plead till the same be shewn; no judgment by *nihil dicit* to be entered against the defendant till the same shewn, nor any nonsuit on the plaintiff if he shew the same before the end of the next term.

P A P E R - B O O K.

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Copies of special verdicts and demurrers to be delivered to the Judges one week before the day of argument.

B*Y* rule, Easter 27 Car. 2. **IT IS ORDERED** by the court, That every attorney of this court towards any such cause, shall deliver

*King's Bench.**Common Pleas.*

liver true copies of the record thereof to the respective Judges of this court, by the space of one whole week at the least, next before the day appointed for such argument; *namely*, the attorney for the plaintiff one copy thereof to the Chief Justice, and another to the Senior Judge, and the attorney for the defendant like copies to each of the other two Justices of this court for the time being, according to the ancient course here used, under such penalty as the court shall think fit to inflict on the attorney neglecting his duty therein.

No argument till the books be delivered.

By rule, Easter 27 Car. 2. IT IS ORDERED by the court, That no argument by counsel on either side shall be heard at the bar, until books be delivered to all the Judges.

If one attorney neglects, the other may deliver all the books, and shall be reimbursed.

By rule, Easter 27 Car. 2. IT IS ORDERED by the court, That in case the attorney of either party shall not deliver books as he ought, then if the attorney on the other side, for expediting his client's cause, will deliver books to all the judges *three days* at the least before the argument, counsel shall be heard on his client's behalf at the day appointed, and the attorney delivering books

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In what cases attorney may make up the issue.

B*T* note on rule, *Easter* 11 *W.* 3. If the plaintiff demurs or takes issue on the defendant's plea, rejoinder or rebutter, and the defendant in case of a demurrer joins therein, and the plaintiff will not make up the book and enter it on record, the defendant may, pursuant to this rule, make up the book and enter it; and when he has made up the book, he must deliver it to the plaintiff, and pay him for the entry of his the defendant's pleadings; because the plaintiff may perhaps enter the issue, as he has a right to do at any time before the expiration of the above-mentioned rule given by the secondary, which rule ought to be served on the plaintiff at the same time the book is delivered to him; if the plaintiff does not enter the issue, the defendant may, at the expiration of the rule, and give notice of trial by *proviso*; but then the plaintiff ought to return to the defendant the money he received from him for the entry on his part.

books as aforesaid, shall be reimbursed the charges of delivering the said two books which ought to have been delivered by the attorney of the adverse party, which charges the said attorney shall be bound to pay on demand thereof.

Where

King's Bench.

Where the plaintiff's attorney may make up the paper-book without giving a rule to rejoin.

By note on rule, Trin. 1 Geo. 2.

In all special pleadings, where the plaintiff takes issue on the defendant's pleadings, or traverses the same on demurrers, so as the defendant is not let in to alledge any new matter, there the plaintiff may make up the paper-book without giving a rule with the secondary to rejoin.

Books made up in term, or four days after, to be returned in four days.

By note on rule, Trin. 1 Geo. 2.

If a paper-book be made up and delivered in term-time, or within four days exclusive after term, with a rule thereon given by the clerk of the papers, for bringing the same book to be inrolled, and if the defendant's attorney does not within four days after the delivery thereof bring back the book, and join with the plaintiff in the special issue or demurrer made up, or waive his special plea, and give the general issue or demurrer to any special issue tendered, and pay for entering the pleadings on his part, judgment may be signed and entered as if no plea had been pleaded.

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If

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If a plea comes in late, and the book be made up in eight days, to be returned in four days.

By note on rule, Trin. 1 Geo. 2.
If a plea be pleaded in term, or in time after the term, and the paper-book is not made up and delivered within *eight days* exclusive after term, or it is because issue to be tried in *London* or *Middlesex*, or a *demurrer*, the other party is not bound to deliver back till within the first *four days* of the next term; but if it be an issue to be tried at the *assizes*, the plaintiff's attorney shall deliver back the book within *four days* after the delivery thereof, and pay for entering his pleadings, and join in the special issue, or give the general issue and notice of trial, or else the plaintiff's attorney may sign judgment by default, as if the defendant had not pleaded. But in all cases, if the plaintiff's attorney accept the book after the limited time, he cannot sign judgment.

The method of proceeding where the paper-book is made up by the defendant.

By note on rule, Easter 11 W. 3.
If the plaintiff demurs, or takes issue on the defendant's plea, rejoinder or rebutter, and the defendant in case of a demurrer joins therein, and the plaintiff will not make up the book and enter it of record, the defendant may, pursuant to this rule, make up the book and enter it; and when he has

Common Pleas.

If a plea comes in late, and the book be made up in eight days, to be returned in four days.
If a plea be pleaded in term, or in time after the term, and the paper-book is not made up and delivered within *eight days* exclusive after term, or it is because issue to be tried in *London* or *Middlesex*, or a *demurrer*, the other party is not bound to deliver back till within the first *four days* of the next term; but if it be an issue to be tried at the *assizes*, the plaintiff's attorney shall deliver back the book within *four days* after the delivery thereof, and pay for entering his pleadings, and join in the special issue, or give the general issue and notice of trial, or else the plaintiff's attorney may sign judgment by default, as if the defendant had not pleaded. But in all cases, if the plaintiff's attorney accept the book after the limited time, he cannot sign judgment.

The method of proceeding where the paper-book is made up by the defendant.

By note on rule, Easter 11 W. 3.
If the plaintiff demurs, or takes issue on the defendant's plea, rejoinder or rebutter, and the defendant in case of a demurrer joins therein, and the plaintiff will not make up the book and enter it of record, the defendant may, pursuant to this rule, make up the book and enter it; and when he has

By note on rule, Easter 11 W. 3.
If the plaintiff demurs, or takes issue on the defendant's plea, rejoinder or rebutter, and the defendant in case of a demurrer joins therein, and the plaintiff will not make up the book and enter it of record, the defendant may, pursuant to this rule, make up the book and enter it; and when he has

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made up the book, he must deliver it to the plaintiff, and pay him for the entry of his the defendant's pleadings; and because the plaintiff may perhaps enter the issue as he has a right to do at any time before the expiration of the above-mentioned rule, given by the secondary, (which rule ought to be served on the plaintiff at the same time the book is delivered to him,) if the plaintiff does not enter the issue, the defendant may at the expiration of the rule, and give notice of trial by *proviso*; but then the plaintiff ought to return to the defendant the money he received from him for the entry on his part.

In all paper-books the names of the counsel are to be inserted.

By rule, Easter 18 Car. 2. IT IS ORDERED by the court, That no special pleas or demurrers in law, in any cause here in court now depending, or hereafter to be prosecuted, shall be received by the clerks of the papers of this court, before such pleas or demurrers in law shall be signed with the proper hands of some counsel in that behalf retained.

AND IT IS FURTHER ORDERED, That the clerks of the papers of this court, in all copies of pleadings and paper-books by them made, shall write under such copies of pleadings and paper-books, the names of the counsel who signed such pleadings, as well on the part of the plaintiff, as on the part of the defendant;
and

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and that in all books to be delivered to the judges of this court, the names of the counsel who shall sign those pleadings, as well on the part of the plaintiff as on the part of the defendant, shall be written under those books by the clerks or attornies who deliver those books.

When books are to be delivered to the judges.

By rule, *Easter 2 Jac. 2.* **IT IS ORDERED** by the court, That on reading of any record here in court on any demurrer in law, special verdict, or writ of error, and thereupon a day is given to hear the counsel of both parties, the books shall be delivered to the judges of this court by the attornies of both parties, by the space of *four days* before the day so by the court appointed; and that the exceptions which shall be insisted on, on the argument, shall be marked in the margin of those books.

The plaintiff to deliver the paper-book to the Chief Justice and senior Judge, and the defendant to the other Judges; if either neglect, it shall be done at his costs to the other, before any argument.

By rule, *Mich. 17 Car. 2.* **IT IS ORDERED** by the court, That in all matters of law, special verdicts, and writs of error on matters in law or special verdicts, and likewise in all other causes depending in court, entered or to be entered

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entered in the book of the clerk of the papers, where books ought to be delivered to the judges, that according to the ancient course of the court, immediately after the reading of the record, books ought to be delivered to the Chief Justice and Senior Justice, by the plaintiff or his attorney, and to the other Justices by the defendant or his attorney; and if one party or his attorney shall neglect to deliver the books in form aforesaid, then the other party or his attorney ought to deliver such books omitted, at the costs of the party who shall so neglect, before any argument in that cause shall be made at bar by counsel.

Causes standing over were formerly to be entered with the clerk of the papers within seven days after the term.

By rule, Easter 1651, IT IS ORDERED by the court, That the ancient rule of this court be received, and henceforth duly observed, that all causes depending in this court to hear counsel, or the resolutions of the court remaining undetermined in any term, which ought to be entered into the court-books by the clerk of the papers, be entered into the said book, within *seven days* after the end of that term, to be heard the next term following, if any of the parties intend then to proceed; to the end, that the clerk of the papers, in convenient time after such entry, may deliver to every of the Justices of the said court, a paper of the said causes, other

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otherwise the said causes not to be received, to be entered into the said book without motion therefore to be made in court.

Note. *This rule is now out of use.*

P A U P E R.

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How admitted in forma pauperis.

BY rule, Hil. 3 & 4 Jac. 2. **IT IS ORDERED** by the court, That none be admitted in *forma pauperis* out of court.

By note on this rule, If a pauper make affidavit that he is not worth 5*l.* and annex the same to a petition to the Chief Justice, with counsel's opinion, he may be admitted out of court.

P L E A D I N G S.

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The common bar and new assignment to be forborn in pleading, where the certainty is contained in the declaration.

BY rule, Mich. 1654, sect. 14. **IT IS ORDERED**, That the plaintiff in such special actions, shall have liberty to enter the imparlances the term following, entering the same of the first term with an *incipitur*, as it has been usual in *quare impedit*; but that all other imparlances be duly entered,

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tered, before any issues, demurrers, or judgments thereupon be entered.

That if the defendant appears the first term, and give no rules to declare, the defendant's attorney may the second term be compelled to accept of a declaration with imparlance, and the declaration may be entered as of that term, with an imparlance over to the next term, or in the first term, with an *incipitur*, as before, as the case shall require.

That if the plaintiff declare not the second term, tho' the defendant gives no rules, yet a *non-suit* may be entered at the end of the second term, on a continuance over, by him entered by *dies datus*, but not the third term or after.

That on a mere real action, or a bare *clausum fregit*, an imparlance of course; but in *dower*, after view had, if the day to appear be upon the first return of any *Hilary* or *Trinity* term, no imparlance without consent or rule of court.

That in *ejectment*, or any personal action, if the appearance be the first return of *Hilary* or *Trinity* term, no imparlance without consent or special rule in such cases, other than in *London* or *Middlesex*. If the appearance be before the morrow of *St. Martin*, or *one month of Easter*, no imparlance without consent or special rule; but if upon or after those

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those returns, an imparlance of course.

In *London* or *Middlesex*, if the appearance be before *the morrow of the Ascension*, or before the last return of any other term, no imparlance, without consent or special rule, but the defendant to plead as of that term, within *fourteen days* after the end of the term, upon a rule given to answer; but if of *the morrow of the Ascension*, or the last return, then an imparlance of course.

The defendant's plea to be delivered to the plaintiff's attorney.

By rule, *Mich. 1654, sect. 15.*
IT IS ORDERED by the court, That the plaintiff having declared and given rules for answer, the defendant is to deliver his plea in writing to the plaintiff's attorney, or his own clerk.

If he is not known, or refuses to accept it, then it may be left in the office.

By the same rule and sect. That if there be no such attorney or clerk to be found, or being found refuses to accept it, then the plea may be left in the office to save a judgment.

On

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On staying proceedings on the bail-bond, the defendant (if admissible to plead) must plead as of the time when the bail should have entered.

By rule, Hil. 6 Geo. 1. IT IS ORDERED by the court, That from and after the last day of this present *Hilary* term, That all bails taken by commissioners pursuant to the act of parliament for taking special bails in the country, shall be transmitted to the Lord Chief Justice, or to one of the Justices of this court; viz. every bail taken within *forty miles* of *London*, within *ten days* after the caption thereof, and every bail taken above *forty miles* from *London*, within *twenty days* after the caption thereof; unless all the said Justices shall be in their circuits, and then as soon as any one of them shall be returned to *London* out of his circuit, being the time prescribed by the orders of this court to be observed by the commissioners, and after such transmission, shall be forthwith delivered to, and filed with the proper officers, to be entered on a record, or otherwise it shall be as no bail; and the plaintiff is at liberty to proceed on the sheriff's bond, as if no such bail were ever put in, and the defendant, in case he be admissible to plead to the original action, shall not be admitted so to do, unless he first pay the full costs to the plaintiff for the prosecution on the bail-bond, and plead as of the term when the bail should have been duly entered.

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In what time prisoners in county-gaols must plead after declaration delivered.

By rule, Easter 5 W. & M. IT IS ORDERED by the court,

1st. That no copy of any declaration shall be delivered to a prisoner in custody, until after the process on which such prisoner shall be taken or charged in custody be returnable.

2dly, That no rule shall be given for the defendant in custody to appear and plead to any declaration against him, until an *affidavit* be filed with the proper *secondary* of the delivery of the copy of such declaration, and of the time when, and the person to whom the same copy was delivered, and a copy of the said *affidavit* shall be produced to the prothonotary before judgment signed, together with a certificate from the proper officer, that no appearance is entered with him,

3dly, That if a copy of the declaration be delivered before *one month of Easter*, or on the *morrow of All Souls*, and the *affidavit* thereof made and filed, and the defendant doth not enter his appearance with the proper officer within ten days after *Easter* or *Michaelmas* term respectively, judgment may be entered.

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In what time prisoners in county-gaols must plead after the declaration delivered.

By rule, *Easter 5 W. & M.*
IT IS ORDERED by the court, That the following rules be observed in the court of *Common Pleas* in the proceedings on declarations delivered to prisoners in custody in county-gaols.

1st, That no copy of any declaration shall be delivered to a prisoner in custody until after the process on which such prisoner shall be taken or charged in custody be returnable.

2dly, That no rule shall be given for the defendant in custody, to appear and plead to any declaration against him, until an affidavit be filed with the proper secondary of the delivery of the copy of such declaration, and of the time when, and the person to whom the same copy was delivered; and a copy of the said affidavit shall be produced to the prothonotary before judgment signed, together with a certificate from the proper officer, that no appearance is entered with him.

3dly, That if a copy of the declaration be delivered before *one month of Easter*, or the *morrow of All Souls*, and affidavit thereof made and filed, and the defendant does not enter his appearance with the proper officer, within ten days after *Easter* or *Michaelmas* term respectively, judgment may be entered against him upon the

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the declaration be not
entered in the office before
the end of the next term; after
the writ or process (by which the
plaintiff shall be taken or engaged
in custody) be returnable, and the
defendant made and filed in manner
aforesaid, before the end of twenty
days after such term (which term
shall be the day of the next term
after the term) the plaintiff shall
be discharged on the giving of
the appearance with the proper
officer by writ of habeas corpus,
and according to the ancient
practice of this court.

And if any gaoler or keeper
of prison, having received a copy
of a declaration against a prisoner
in his custody, shall suppose the
same, or not deliver it forthwith
to such prisoner, an attachment
shall be issued against him.

By the Judge of the Court, That
all declarations in cases of this
kind, delivered pursuant to the
rule of this court, made the 11th
of the next term, on process re-
turnable the 1st of the next term,
or any term, when the defendant
is within twenty miles of London,
shall be delivered with notice that
the defendant or his advocate shall
be heard within four days
after such declaration delivered,
and all declarations when the
defendant is more than twenty
miles from London, shall be
delivered with notice that the
defendant or his advocate shall
be heard within eight days after
such declaration delivered.

the certificate as aforesaid, if rules
have been given, but if he doth
not enter his appearance as afore-
said before the end of ten days
after the term, he shall imparl
until the next term, unless the
action be in *London* or *Middlesex*,
and the defendant be in prison
within *forty miles* of the cities of
London and *Westminster*, then, tho'
he doth appear before the expira-
tion of *ten days* after the end of
the term, he shall plead *two days*
before the *essoign-day* of the next
term, and in default thereof, rules
having been given, judgment may
be entered against him as afore-
said.

4thly, If a copy of the decla-
ration be delivered on or after *one*
month in *Easter term*, or the mor-
row of *All Souls*, in *Michaelmas*
term, or in *Hilary* or *Trinity term*,
and the plaintiff thereupon shall
give rules to appear and plead; if
the defendant enter his appear-
ance *two days* preceding the *essoign-*
day of the next term, he shall im-
parl until the next term; but if
he doth not appear within that
time, judgment may be entered
against him as aforesaid.

5thly, If the writ be return-
able in one term, and a copy of
the declaration be delivered before
the *essoign-day* of the next term,
the plaintiff in such next term
may give rules to appear and
plead, and if the defendant
doth not enter his appearance
and plead by that time that the
rules are out, judgment may be
entered against him as aforesaid.

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6thly, If the declaration be not entered or left in the office before the end of the next term; after the writ or process (by which the prisoner shall be taken or charged in custody) be returnable, and an affidavit made and filed in manner aforesaid, before the end of *twenty days* after such term, (*Easter term* excepted, and within *ten days* after *Easter term*) the prisoner shall be discharged on the entering of his appearance with the proper officer by writ of *supersedeas*, made by him according to the ancient practice of this court.

7thly, If any gaoler or keeper of prison, having received a copy of a declaration against a prisoner in his custody, shall suppress the same, or not deliver it forthwith to such prisoner, an attachment shall be issued against him.

By rule, *Easter 3 Geo. 2. IT IS ORDERED* by the court, That all declarations in *London* or *Middlesex*, delivered pursuant to the rule of this court, made the last *Michaelmas* term, on process returnable the *first* or *second* returns of any terms, where the defendant lives within *twenty miles* of *London*, shall be delivered with notice that the defendant or defendants plead to such action within *four days* after such declaration delivered, and that all declarations where the plaintiff declares in any other county, or the defendant lives above *twenty miles* from *London*, shall be delivered with notice to plead within *eight days* after such declaration delivered.

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The rule made in *Michaelmas term*, in the first year of his present Majesty's reign, to establish the practice of this court on the late act of parliament for preventing frivolous and vexatious arrests, to the contrary thereof in any wise notwithstanding.

Imparances and incipiturs to be entered, else a further imparance of course.

By rule, *Trin. 21 Car. 2. IT IS ORDERED* by the court, this present *Trinity term*, That all attornies and clerks of this court do henceforth duly enter or cause to be entered, *imparances* or *incipiturs*, in all causes, according to the ancient usage and custom of this court; and that the want of entering an *imparance* or *incipitur* in every cause wherein *imparances* ought to be entered, be a sufficient cause for the defendant to have a farther *imparance* of course.

And that no attorney, clerk, or any minister of this court, shall hereafter give any common rule to plead, in any cause wherein *imparances* or *incipiturs* ought to be and are not entered on record in any of the prothonotaries remembrances, until the respective prothonotary in whose office the cause is, shall give allowance for the giving of such rule to plead.

When

King's Bench.

The rule made in 1654, in the first year of his present Majesty's reign, to establish the practice of this court on the act of parliament for preventing divisions and variations, to the contrary thereof, in any wife notwithstanding.

By rule, Mich. 1654, sect. 14. IT IS ORDERED by the court, That all at- torneys and clerks of this court, who have entered, or shall hereafter enter, for any cause, in all causes, according to the ancient usage and custom of this court; and that the want of entering an instrument or judgment in every cause where an instrument ought to be entered, be a sufficient cause for the defendant to have a further judgment of course.

By rule, Mich. 1654, sect. 15. IT IS ORDERED by the court, That no judgment by *nihil dicit* be entered, until there be a rule to plead first given in that prothonotary's office where the cause is entered, and the day by such rule be passed; and that such rules be only given in the bills of pleas or other remembrances, for that purpose only, to be in the custody of the secondary of the respective prothonotaries during the time limited for giving of rules, to the intent that all persons concerned may have recourse to the said secondary, and to see the same *gratis*; and that clerks who usually enter for attorney's fees, may give rules for answer in the said remembrances, in all their own causes wherein there has been

And that no attorney, clerk, or any minister of the court, shall hereafter give any common rule to plead, in any cause wherein an instrument or judgment ought to be entered, and not entered on the day by such rule be passed, and that the respective prothonotaries, and the respective secondary in whose office the cause is, shall give allowance for the giving of such rule to plead.

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When an imparlance of course, and when no imparlance without consent or rule of court.

By rule, Mich. 1654, sect. 14. IT IS ORDERED by the court, That if the defendant appear the first term, and give no rules to declare, the defendant's attorney may the second term be compelled to accept a declaration with *imparlance*, and the declaration may be entered as of that term, with an *imparlance* over to the next term, or in the first term with an *incipitur* as before, as the case shall require.

How rules to plead and declare are to be entered, and when to be given.

By rule, Mich. 1654, sect. 15. IT IS ORDERED by the court, That no judgment by *nihil dicit* be entered, until there be a rule to plead first given in that prothonotary's office where the cause is entered, and the day by such rule be passed; and that such rules be only given in the bills of pleas or other remembrances, for that purpose only, to be in the custody of the secondary of the respective prothonotaries during the time limited for giving of rules, to the intent that all persons concerned may have recourse to the said secondary, and to see the same *gratis*; and that clerks who usually enter for attorney's fees, may give rules for answer in the said remembrances, in all their own causes wherein there has been

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been imparlances, except in *ejaculations*, so as they enter the same rules in the offices without carrying any of the said remembrances out of any of the said offices, and that the secondary set down upon the said remembrances the day wherein such rules are given, and that no rules to declare or answer be given after *four days* exclusive after the end of any term, and such rule to be out at *four days* exclusive of the day wherein the same is given.

Where process is returnable the first or second return of any term, and the plaintiff declares in London or Middlesex, the defendant, if he lives within twenty miles of London, must plead in four days.

By rule, Mich. 3 Geo. 2. IT IS ORDERED by the court, That on all process sued out of this court, returnable the first or second return of any term, if the plaintiff declares in *London or Middlesex*, and the defendant lives within *twenty miles of London*, the defendant shall plead within *four days* after such declaration delivered without any imparlance, and such declaration may be delivered *de bene esse*, and in case the plaintiff declares in any other county, or the defendant lives above *twenty miles from London*, the defendant shall plead within *eight days* after the declaration delivered without any imparlance, and in default of pleading as aforesaid, the plaintiff may sign his judgment.

Decla-

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Declaration must be delivered with notice to plead accordingly in four or eight days.

By rule, Easter 3 Geo. 2. IT IS ORDERED by the court, That all declarations in *London* or *Middlesex*, delivered pursuant to the rule of this court, made the last *Michaelmas* term, on process returnable the *first* or *second* returns of any term, where the defendant lives within *twenty miles* of *London*, shall be delivered with notice that the defendant or defendants plead to such action within *four days* after such declaration delivered, and that all declarations where the plaintiff declares in any other county; or the defendant lives above *twenty miles* from *London*, shall be delivered with notice to plead within *eight days* after such declaration delivered.

What time the defendant had to plead by the ancient practice of this court.

By rule, Mich. 5 Ann. IT IS ORDERED, That if any person or persons being arrested upon any writ of *latitat*, or any other process issuing out of this court returnable here in court before three weeks of *Easter* term, or the month of *Michaelmas* in the term of *St. Michael*, and the defendant shall appear and put in common or special bail thereupon, and the plaintiff shall declare in any action whatsoever, and shall lay his action in *London*, or in the county of *Middlesex*, that then if the declaration shall

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be delivered to the attorney for the defendant, or filed, or left in the office before the *essoign-day* of the month of *Easter*, in *Easter* term, and before the *essoign-day* of the morrow of *All Souls*, in the term of *St. Michael*, then the defendant in such action, upon rules given, shall plead to issue of the same term in which the declaration was delivered, filed, or left by the space of *two days*, next before the *essoign-day* of the next term; otherwise judgment may be entered by default. But if the declaration was not delivered, filed or left, until after the said several *essoign-days* in each term of *Easter* and *Michaelmas*, then the defendant shall have leave to plead until the next term, according to the ancient course of the court.

By note on this rule, The defendant had in all cases an *imparlance* to the next term after the return of the process, except the proceedings were by original, or for or against attornies or other privileged persons, or against prisoners in custody of the marshal, in which cases the defendant was bound to plead without any *imparlance* the same term the declaration was delivered, (if delivered *four days* before the end of the term) and except the proceedings were by *habeas corpus*, or the process was returnable the *first* return of *Easter* or *Michaelmas* term, and the declaration delivered according to this rule.

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Four days only allowed defendants to plead from the time of giving rules.

By rule, Trin. i Geo. 2. IT IS ORDERED by the court, That if the defendant or defendants in a suit, do not plead by the time the rules for pleading are out, (being first served by the plaintiff's attorney with notice in writing) the plaintiff may sign judgment without further calling for a plea, and thereon give notice of executing his writ of inquiry, either by delivering a notice in writing to such defendant or defendants, or by leaving the same at the last or most usual place of abode of such defendant or defendants, which shall be a sufficient notice to such defendant or defendants of the time of executing such writ of inquiry.

AND IT IS FURTHER ORDERED, That from and after Hilary term, *four days* only shall be allowed such defendant, from the time of giving any rules to plead.

By note on the foregoing rule, Sunday, or any holiday on which the court does not sit, or the office is not open, if it be not the last of those four days, is to be accounted a day within those rules.

When

King's Bench.

When pleas in abatement tender, or uncore priſt are to be pleaded.

By note on rule *Eaſter 5 Ann.* Pleas to the jurisdiction of the court, or in abatement, ought to be pleaded before the rule for pleading is out, and cannot be pleaded after a common *imparlance*, or unless the declaration be delivered after term, or ſo late in the term, that the defendant is not bound to plead to it that term, in both which caſes, if the defendant within the firſt *four days* incluſive of the next term, plead any plea in abatement, or to the jurisdiction of the court, as of the preceding term, but if ſuch plea be not delivered or left in the office in time, (whether a rule to plead be given or not) ſuch plea is not to be received, &c.

Sunday, or any day on which the court does not ſit, is to be accounted as one of the *four days*, unless it happens to be the laſt day.

Every plea of *tender*, or where the defendant alledged he was always ready to do any particular act, muſt be pleaded in like manner as pleas in abatement. If it be a plea of *tender*, the money muſt be brought into court, and the receipt of the proper officer be wrote on the plea before it is filed. See rule *Hil. 5 Jac. 1.*

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Common Pleas.

In what cases the defendant must plead in four days, and when in eight days.

By rule, Trin. 5 & 6 Geo. 2. IT IS ORDERED by the court, That on all process to be sued out of this court, returnable the first or second return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within *twenty miles* of *London*, the declaration shall be delivered with notice to plead within *four days* after the delivery thereof, and the defendant shall plead within the same *four days* without any *imparlance*, and in case the plaintiff declares in any other county, or the defendant lives above *twenty miles* from *London*, the declaration shall be delivered with notice to plead within *eight days* after the delivery thereof; and the defendant shall plead within the said *eight days* without any *imparlance*, and on default of pleading as aforesaid, the plaintiff may sign his judgment, any rule of this court to the contrary notwithstanding.

By rule, Mich. 10 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this term, on all process to be issued out of this court, returnable the first or second return of any term, where no *affidavit* shall be made and filed of the cause of action, pursuant to the late act of parliament for preventing frivolous and vexatious arrests, the plaintiff may deliver the declaration *de bene esse*, at the return of such process with notice to plead in *eight days*

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after the delivery thereof, and if the defendant does not file common bail, and plead within the said *eight days*, the plaintiff having filed common bail for such defendant, according to the said act, may sign judgment for want of a plea, a rule to plead being duly entered.

In what time defendant must plead where the cause of action is specially set forth in the writ.

By rule, *Hil. 2 Geo. 2. IT IS ORDERED* by the court, That where any defendant shall be arrested by virtue of any process issuing out of this court, in which the cause of action shall be specially specified and expressed, or a copy of such process shall be delivered to any defendant, according to the form of the statute in such case lately made and provided, and the plaintiff thereupon shall declare, the defendant in such case shall not have liberty of *imparlance* without leave of the court in that behalf first to be granted, but shall plead thereunto within the time allowed by the course of the court, to defendants suit by original writ, and for want thereof judgment may be entered against such defendant by default.

What notice to plead is necessary where four terms are elapsed.

By note on rule *Trin. 5 & 6 Geo. 2.* If four terms are elapsed after the declaration is delivered, the defendant shall have a whole term's notice to plead before judgment

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ment can be entered against him, or if a cause has continued *four terms* without prosecution, before issue joined, each party shall have a whole term's notice to *reply, rejoin, &c.* unless the cause has been stayed by injunction or privilege.

What time an attorney, or persons sued by him, has to plead.

By note on rule, Mich. 5 Ann.
If a bill be filed against an attorney, and a copy thereof delivered *four days* exclusive, before the end of the term, including *Sunday* as one, the defendant must plead as of that term, the plaintiff having entered a rule to plead, and demanded a plea; otherwise if a bill be not filed, and a copy delivered within that time, the defendant is entitled to an *imparlance*.

If an attorney sues out an *attachment of privilege*, and delivers his declaration *four days* before the end of the term, the defendant must plead as of that term, but if he does not deliver his declaration before the *essoign-day* of the subsequent term, the defendant will have an *imparlance* to the next term following.

Note. By *stat. 2 Geo. 2. cap. 23.* and *12 Geo. 2. cap. 13.* An attorney cannot bring an action till a month after a bill delivered, and subscribed with his proper hand.

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If any deed be set forth with a profert in cur. defendant may demand oyer and a copy before he pleads.

By note on rule, Trin. 5 & 6 Geo. 2. If the plaintiff in his declaration sets forth a *profert in curia* of a deed, writing, letters of administration, or the like, the defendant may pray *oyer*, and must have a copy thereof delivered to him, paying for the same after the rate of 4*d.* per sheet, and also for the stamps, and shall have such time to plead after the delivery as he had when he demanded *oyer*.

If the defendant in his plea make a *profert* of a deed, &c. the plaintiff may pray *oyer*, and shall have a copy at the like rate and the same time to *reply* as he had at the time of demanding *oyer*.

In suits by original, defendant need not plead till oyer of the original.

By note on rule, Trin. 5 & 6 Geo. 2. The defendant is not bound to plead to a declaration by original, till *oyer* and a copy of the original is given him if he demands it.

In what time defendant must plead after plaintiff has amended his declaration.

By note on rule, Mich. 10 Geo. 2. In all cases of amendment after plea pleaded, the defendant has liberty to plead again, and has two

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two days for that purpose after the amendment made and payment of costs.

If a rule to plead be entered the same term the amendment is made, tho' before such amendment it is sufficient, otherwise a new rule to plead must be entered. The plaintiff, after plea pleaded, or after the end of the second term, shall not add a new count to his declaration, under pretence of amending his declaration.

In what cases a defendant may vary his plea.

By note on rule, Trin. 5 & 6 Geo. 2. The defendant cannot wave the general issue, and instead thereof give a special plea or demurrer; nor wave a general demurrer and give a special demurrer or special plea. If a special plea or special demurrer be given in, and the book is made up and delivered to the defendant's attorney, he may strike out the special plea or demurrer and return it with the general issue, or general demurrer.

When the defendant must plead without a demand of a plea.

By note on rule, Trin. 5 & 6 Geo. 2. If the defendant is bound by rule or order of court, to plead by a time therein limited, it is incumbent on him to plead by such time, altho' the plaintiff does not enter

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enter any rule to plead or call for a plea.

No need of affidavit to plead several pleas.

By note on rule, Trin. 5 & 6 Geo.

2. In order to plead two or more matters, it is not necessary that affidavit be made of the facts, but the court expects to be informed what the matters be that are desired to be pleaded, in order to judge whether they are proper.

If a judgment be pleaded, the term and number of the roll to be given if required.

By note on rule, Trin. 5 & 6 Geo.

2. If a judgment or matter of record in the same court be pleaded, the party pleading the same must, on demand, give a note in writing of the term and number roll whereon such judgment or matter of record is entered and filed, or in default thereof the plea is not to be received.

In case of a dilatory plea or frivolous demurrer, the court will order the defendant to stand by it, or plead instantly or on the morrow.

By note on rule, Trin. 5 & 6 Geo.

2. If the defendant pleads a dilatory or frivolous plea, the court on motion will order, that he stand to his plea, or plead some other plea peremptorily on the morrow, or if it be towards the

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end of the term, (that the plaintiff may have sufficient time to give notice of trial) the court will order the defendant, if he will not abide by his plea, to plead another instantly, *provided always*, that the time allowed by the common rule to plead be expired, and it is the same practice with regard to frivolous demurrers.

A defendant when bound to plead an issuable plea yet may demur to the replication.

By note on rule, Trin. 5 & 6 Geo. 2. If a defendant be bound by rule of court or order of a Judge to plead an issuable plea, and take notice of trial and plead accordingly, and the plaintiff replies, the defendant may without breach of the rule or order demurr to the replication,

The common bar and new assignment to be forborn in pleadings where the certainty is contained in the declaration.

By rule, Mich. 1654. *sect* 16. **IT IS ORDERED** by the court, That the common bar and new assignment be forborn where the certainty is contained in the declaration equivalent to a new assignment.

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In pleading an outlawry the mesne process not to be repeated.

By same rule and sect. IT IS ORDERED, That in the pleading of an outlawry the mesne process be not repeated, but the writ of exigent and outlawry joined to the commencing of the suit.

In pleading a general statute, the statute not to be recited.

By same rule and sect. IT IS ORDERED, That in pleading a general statute, the statute be not recited as for example. Stat. 21 Jac. of limitations.

General pleas to be delivered to the plaintiff's attorney, or entered in the general issue book.

By note on rule, Trin. 5 & 6 Geo. 2. General pleas are wrote on double penny stamped paper, and delivered to the plaintiff's attorney, or, if his place of abode be unknown, the plea may be entered in the general issue book, kept by the clerk of the dockets, for which you pay 4 d. and you pay the plaintiff's attorney 1 s. for the entry.

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I i 2

SPECIAL PLEADINGS.

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Are to be left with the clerks of the papers, who are to make and sign copies.

BY rule, Trin. 2 Jac. 1. **IT IS ORDERED** by the court, That no attorney or clerk attending here in court, shall deliver to any attorney or clerk attending here in court, or to any other person, or shall accept from any attorney or clerk attending here in court, or from any other person, any plea to be put into the office of the clerk of the papers, or a copy of such plea before the same plea be left in the office of the clerk of the papers, and that such copy, after such plea is left, shall be made by the clerk attending in the aforesaid office of the clerk of the papers, and signed with the hand of a clerk attending there, under the penalty that every attorney or clerk attending here in court shall forfeit for his *first* offence so committed 10 s. to be paid to the box for the use of the poor; 20 s. for the *second* offence so committed, in like manner to be paid to the box for the use of the poor; and that every such attorney or clerk shall for the *third* offence so committed be expelled the court.

By rule, Trin. 16 Car. 2. **IT IS ORDERED** by the court, That no attorney or clerk attending here in court, presume to deliver

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deliver to any other attorney or clerk attending here in court, or to any other person, or to accept from any other attorney or clerk attending here in court, or from any other person, any plea that ought to be left in the office of the clerk of the papers, or a copy of such plea, before such plea be left in the same office of the clerk of the papers, and that such copy, after such plea is left, shall be made by the clerk attending in the aforesaid office of the clerk of the papers, and signed under the hand of one of the clerks attending there, under the penalty, that every attorney or clerk attending here in court, for the *first* offence so committed, shall forfeit 10 s. to be paid to the box to the use of the poor; and for the *second* offence committed 20 s. in like manner to be paid to the box for the use of the poor; and for his *third* offence, such attorney or clerk shall be expelled from the court here, according to the rule in that behalf made. *Trin. 2 Jac. 1.*

By rule, *Mich. 2 W. & M. 17*
IS ORDERED by the court,
 That no attorney or clerk, attending here in court, presume to deliver to any other attorney or clerk attending here in court, or to any other person, or receive from any attorney or clerk attending here in court, or any other person, any special plea, to be put into the office of the clerk of the papers, or a copy of such plea, before that such plea shall be put into the office of the clerk of the papers,

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papers, and that such copy after such plea be put in, shall be made by the clerk attending in the aforesaid office of the clerk of the papers, and signed under the hands of one of the clerks attending there, under the penalty that every attorney and clerk attending here in court shall forfeit for his *first* offence so committed, 10*s.* to be paid to the box for the use of the poor; and for his *second* offence so committed 20*s.* to be paid likewise to the box for the use of the poor; and for the *third* offence so committed, that such attorney or clerk be expelled this court, according to two former rules peremptorily and generally in the like case made by the court, in full court, *to wit*, *Trin. 2 Jac. 1. & Trin. 16 Car. 2.*

Special pleas are to be signed by counsel.

By rule, Easter 18 Car. 2. IT IS ORDERED by the court, that no special pleas or demurrers in law, in any cause here in court now depending, or hereafter to be prosecuted, shall be received by the clerk of the papers of this court, before such pleas or demurrers in law, shall be signed with the proper hand of some counsel in that behalf retained.

AND IT IS FURTHER ORDERED That the clerks of the papers of this court, in all copies of pleadings, and paper-books by them made, shall write under
such

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such copies of pleadings, and paper-books, the names of the counsel who signed such pleadings, as well on the part of the plaintiff as on the part of the defendant; and that in all books to be delivered to the Justices of this court, the names of the counsel who shall sign these pleadings, as well on the part of the plaintiff as on the part of the defendant shall be written under those books by the clerks or attorneys who deliver those books.

Pleas to be entered in the office three days after the end of every term.

By rule, Trin. 14 Car. 2. IT IS ORDERED by the court, That all attorneys of this court shall appear in court in their proper persons, on or before the 14th day of the term of St. Michael, and on or before the 7th day of every other term, under the penalty of forfeiting for the first default 10 s. and for the second 20 s. and that every attorney shall enter in the office of this court all pleas and demurrers in law within three days after the end of every term, and that no rules shall be made by any Justice of the court of the Lord the King, before the King himself, in any action in the said court pending after the 3d day next after the end of any term, and that no attorney of the said court shall attend any of the said Justices to make any rules after the 3d day next after the end of any term, and that no rules shall be made peremptorily to attend after the 3d day

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3d day after the end of any term, and that all rules made after the *third day* after the end of any term, shall be void.

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P O S T E A S.

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Attorneys to take care that postleas be marked by the clerk of the postleas two days after receipt thereof, and before costs are taxed.

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BY rule Trin. 2 Jac. 1. IT IS ORDERED by the court, That every attorney and clerk attending here in court, who shall receive any *poslea* from any clerk of assizes, or any other officer appointed to return *posleas*, shall get every such *poslea* so returned, marked with the hand of the clerk appointed to receive *posleas* here in court, within *two days* after such *poslea* comes to the hands of such attorney or clerk attending here in court, under the penalty that every such attorney or clerk attending here in court, shall forfeit for his *first* default in this behalf 10s. to be paid to the box for the use of the poor; for his *second* default in this behalf 20s. in like manner to be paid to the box for the use of the poor; and for the *third* default; that every such attorney or clerk shall be expelled from the court.

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The clerks of assize to appear with their postas the first day of Easter and Michaelmas term.

By rule, Mich. 1654. sect. 1.
IT IS ORDERED by the court, That the clerks of assize, their deputies or assistants, do personally appear with their *postas* on the first day of Easter and Michaelmas term, and the deputy sheriffs and all other officers of the court, do personally appear by the *essoign-day* of every second return of every term, and continue there during the residue of the term, without some just cause allowed by the court.

Formerly postas were to be delivered out of court, only to prothonotaries, clerks and filacers.

By rule, Hil. 1657. Tuesday next after fifteen days of St. Hilary.

IT IS ORDERED by the court, That no *postas* be delivered out of court to any person whatsoever, but to the prothonotaries or their clerks, or to the filacers of this court, who may be answerable for the same in case any complaint shall be objected against them.

Note. *Postas* are now delivered to the attorney, plaintiff or defendant who obtains a verdict immediately after the trial, in a town cause, and in a country cause, the term next after the assizes.

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Clerks of assize and associates, to make return of *posseas* and deliver them to the prothonotaries on the *quarto die post* of the return of the writ of *nisi prius*.

Easter 2 Jac. 2.

Of the term of Easter in the second year of James the second.

IT IS ORDERED by the court, That every clerk of assize of the respective circuits within this realm of England, and also the associate of the Lord Chief Justice of this court, shall make returns of all *posseas* on all records issuing out of this court, whereupon any proceedings have been by virtue of *nisi prius*, *distringas*, *habeas corpora jur.* and shall cause the same to be delivered to the respective prothonotaries of this court, on the *quarto die post* of the return of the writ of *nisi prius* in bank, on pain of forfeiting the sum of 20 l. to be estreated into the King's Majesty's court of Exchequer.

On signing judgment the *possea* to be left with the clerk of the judgments.

By rule, Trin. 13 Geo. 2. **IT IS ORDERED** by the court, That from and after the last day of this term, where final judgment shall be signed on *posseas* of *inquisitions*, on writs of inquiry, such *posseas* or *inquisitions* shall immediately be left with the clerk of the judgments, of the respective prothonotaries, and shall

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shall not afterwards be taken out of the office without leave of the court.

Posteas on qui tam prosecutions shall be delivered to the prothonotaries, and not to the prosecutor, and notice thereof given to the clerk of the warrants.

By rule, Easter, 8 Car. 2. *IT IS ORDERED* by the court, That whensoever an action by any *qui tam* for our Lord the King, &c. upon any penal statute, has been prosecuted and tried, and where a verdict for our Lord the King has been given, the *postea* returned by the clerk of the assizes the first day of the next term after such verdict so given, shall be delivered into this court, into the hands of the prothonotary in whose office the cause is, and not to the prosecutor, and that judgment thereupon shall be entered on record, so that part of the penalty which belongs to our Lord the King, may be duly levied.

AND IT IS FURTHER ORDERED, That when judgment has been entered of record, a note or *precipe* of that record, with the number of the roll thereof, shall be delivered by the clerk of the judgments to the clerk of the warrants of this court, that the sum or fine which to the said Lord the King so belongs by the clerk of the warrants among others, in the sum of —, due to the said Lord the King may be duly
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extracted, and that the clerk of the warrants for the receipt of such note or *precipe*, shall put his hand to the paper of the clerk of the judgments, for entering the judgments aforesaid.

P R I S O N E R.

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No bailiff to take from any prisoner in his custody, a warrant to acknowledge judgment, unless in the presence of an attorney.

BY rule, *Easter 15 Car. 2.*
IT IS ORDERED by the court, That no bailiff nor sheriff's officer, shall presume to exact or take from any person being in his custody by arrest, any warrant to acknowledge a judgment but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereunto, which said warrant shall be produced when the said judgment shall be acknowledged; and if any bailiff or sheriff's officer, shall hereafter offend or do contrarywise, he shall be severely punished for so doing.

AND IT IS FURTHER ORDERED, That no attorney shall from henceforth acknowledge or enter, or cause to be acknowledged or entered, any judgment by colour of any warrant gotten from any

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any defendant being under an arrest, otherwise than as is aforesaid.

The ancient practice in relation to proceeding against or discharging prisoners.

By rule, *Mich. 1654. sect. 11.*
IT IS ORDERED by the court, That if the defendant be committed to the prison of the *Marshalsea* by the process of this court, the prisoner giving rules to declare, and notice thereof to the plaintiff or his attorney, and oath thereof made, the plaintiff not declaring before the end of the *second term* after commitment, *inclusive*, then the defendant in reference thereunto to be discharged of the imprisonment in the end of the *second term* on common bail.

And if any defendant be committed to any other prison on any process of this court, giving rules and notice as before, and oath thereof made, if the plaintiff do not remove the prisoner, and declare before the end of the *second term*, after the commitment *inclusive*, then the defendant in reference thereunto, likewise be discharged of the imprisonment in the end of the *second term*, on common bail.

By rule, *Easter 16 Car. 2. 17*
IS ORDERED by the court, That every attorney of this court who shall discharge any prisoner charged with any action here in court,

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court, pending out of prison for want of prosecution within *three terms*, shall give notice to the plaintiff in such action, or his attorney, to appear before some justice of this court, to shew cause why such prisoner ought not to be discharged for want of prosecution, before he shall procure any warrant under the hand of any justice of this court, for the discharge of such prisoner out of prison, and if the plaintiff in the same action, or his attorney, on such notice to them or either of them thereof given, shall not appear to shew cause to the contrary, then on oath made of such notice, such prisoner against whom no prosecution has been within *three terms* then next preceeding, shall be discharged out of prison, at the peril of the attorney who shall procure such prisoner to be discharged in form aforesaid.

By note on rule, Easter, 8 W. & M. If the declaration be not filed before the end of the next term after the writ or process (by which the prisoner was taken or charged in custody) is returnable, and affidavit made and filed in manner aforesaid, before the end of *twenty days* next after such term, such prisoner shall be discharged by common bail, to be signed by one of the justices of this court.

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Rules for delivering declarations to prisoners in gaol.

Vide head Declaration.

Prisoners in custody on a criminal account not to be charged with civil actions.

By note on rule, Trin. 2 Geo. 1. All persons in custody on any criminal matter, cannot be charged, at the suit of a subject in any action, without leave of the court. *Salk. p. 354.*

Prisoners on mesne process, taken on an escape warrant, may be discharged, unless declaration be delivered in two terms.

By rule, Trin. 8. Ann. **IT IS ORDERED** by the court, That where any defendant being a prisoner in custody of the marshal of this court on *mesne process*, shall be taken and detained in custody of any sheriff of this kingdom, by virtue of a judge's warrant of this court, for an escape made from the custody of the marshal aforesaid,

IT IS ORDERED, That the plaintiff in such action shall declare against such defendant in custody of such sheriff, before the end of the *second term*, after such taking and detaining, otherwise a *supersedeas* may be made for such defendant.

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A defendant being rendered in discharge of his bail after judgment, must be charged in execution in two terms.

By note on rule, Trin. 2 Geo. 1.
If a defendant surrender himself after judgment in discharge of his bail, the plaintiff must charge him in execution in two terms, (the term wherein he surrenders to be accounted one) or he may be discharged on filing common bail, as if in custody for want of bail on an action, unless proceedings be stayed by writ of error or inquisition.

A plaintiff not declaring in two terms, prisoner may be discharged on common bail.

By rule, Mich. 1654. sect. 11.
IT IS ORDERED by the court, That if any defendant be committed to any other prison on any process of this court, and giving rules and notice as before, and oath thereof made, if the plaintiff does not remove the prisoner, and declare before the end of the *second* term after the commitment *inclusive*, then the defendant in reference thereunto, likewise to be discharged of the imprisonment in the end of the second term on common bail.

By rule, Easter 5 W. & M. IT IS ORDERED by the court, That if the declaration be not filed before the end of the next term after the writ or process (by which the prisoner was taken or charged in custody) is returnable, and affidavit made and filed in

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manner aforesaid before the end of *twenty days* next after such term, such prisoner shall be discharged by common bail, to be signed by one of the justices of this court.

By rule, Trin. 2 Geo. 1. IT IS ORDERED by the court, That if any defendant shall be committed to the custody of the marshal of this court, or charged in custody of the said marshal, or arrested or committed, by virtue of the process this court, to the custody of any sheriff or other officer whatsoever, at the suit of any plaintiff, and shall so remain in custody for *two terms*, and the plaintiff shall not declare against such defendant within that time, that then such defendant after the end of the *second term* after such imprisonment, shall be discharged out of the prison where he shall be so detained, on filing common bail, signed by one of the justices of this court, without giving notice to the plaintiff or his attorney.

And if such plaintiff shall declare against such defendant a prisoner in custody of the marshal of this court, or any sheriff or other officer as aforesaid remaining, and shall not proceed to trial or judgment within *three terms* next after such declaration delivered, or if any plaintiff shall obtain judgment in the court wherein any action against any defendant a prisoner, and shall not charge the said defendant so in prison remaining in execution

upon the judgment obtained within the term next after such judgment is had and obtained, then such defendant is in prison remaining, shall have leave to come out of the common hall, or to the out of the court, or to the out of the court, here, according to the course of this court, for his discharge out of custody aforesaid, where he shall be so detained, to be granted by one of the justices of this court, if cause shall not be shown to the contrary by the plaintiff or his attorney, and notice to them or either of them given by the attorney for the defendant, and copy of the said notice to be made, if the said plaintiff shall not appear before the judge aforesaid, to hinder filing common bail aforesaid, or making the aforesaid writ of habeas corpus.

The writ of habeas corpus is a writ which is to be granted to a prisoner who is detained in prison, and who is entitled to be discharged out of prison.

The writ of habeas corpus is a writ which is to be granted to a prisoner who is detained in prison, and who is entitled to be discharged out of prison. The writ of habeas corpus is a writ which is to be granted to a prisoner who is detained in prison, and who is entitled to be discharged out of prison.

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upon the judgment so obtained, within *two terms* next after such judgment so had and obtained, then such defendant so in prison remaining, shall have leave to file common bail, or to sue out a writ of *superfedeas* out of the court here, according to the course of this court, for his discharge out of custody aforesaid, where he shall be so detained, to be granted by one of the justices of this court, if cause shall not be shewn to the contrary by the plaintiff or his attorney, on notice to them or either of them, given by the attorney for the defendant, and oath of the said notice to be made, if the said plaintiff shall not appear before the judge aforesaid, to hinder filing common bail aforesaid, or making the aforesaid writ of *superfedeas*.

The term in which the process is returnable to be accounted one.

By note on rule, Trin. 2 Geo. 1. **IT IS HELD**, that the term in which the writ (*whereon the defendant was arrested*) is returnable to be accounted one of the *two terms*, altho' the writ be returnable on the last day of the term, and so likewise the term wherein the defendant was committed to the custody of the marshal, is to be accounted one, altho' not committed till the last day of a vacation.

Plaintiff

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And where the defendant shall be committed to the custody of the marshal, he shall have leave to sue out a writ of *superfedeas* out of the court here, according to the course of this court, for his discharge out of custody aforesaid, where he shall be so detained, to be granted by one of the justices of this court, if cause shall not be shewn to the contrary by the plaintiff or his attorney, on notice to them or either of them, given by the attorney for the defendant, and oath of the said notice to be made, if the said plaintiff shall not appear before the judge aforesaid, to hinder filing common bail aforesaid, or making the aforesaid writ of *superfedeas*.

ORDERED by the court, That if any defendant shall be committed to the custody of the marshal, he shall have leave to sue out a writ of *superfedeas* out of the court here, according to the course of this court, for his discharge out of custody aforesaid, where he shall be so detained, to be granted by one of the justices of this court, if cause shall not be shewn to the contrary by the plaintiff or his attorney, on notice to them or either of them, given by the attorney for the defendant, and oath of the said notice to be made, if the said plaintiff shall not appear before the judge aforesaid, to hinder filing common bail aforesaid, or making the aforesaid writ of *superfedeas*.

And if such plaintiff shall be committed to the custody of the marshal, he shall have leave to sue out a writ of *superfedeas* out of the court here, according to the course of this court, for his discharge out of custody aforesaid, where he shall be so detained, to be granted by one of the justices of this court, if cause shall not be shewn to the contrary by the plaintiff or his attorney, on notice to them or either of them, given by the attorney for the defendant, and oath of the said notice to be made, if the said plaintiff shall not appear before the judge aforesaid, to hinder filing common bail aforesaid, or making the aforesaid writ of *superfedeas*.

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Plaintiff not proceeding to trial or judgment in three terms after declaration, prisoner may be discharged on notice.

By rule, *Easter, 16 Car. 2.* **IT IS ORDERED** by the court, That every attorney of this court who shall discharge any prisoner charged with any action here in court pending, out of prison for want of prosecution within *three terms*, shall give notice to the plaintiff in such action, or his attorney, to appear before some justice of this court, to shew cause why such prisoner ought not to be discharged for want of prosecution, before he shall procure any warrant under the hand of any justice of this court for the discharge of such prisoner out of prison; and if the plaintiff in the same action, or his attorney, on such notice to them or either of them thereof given, shall not appear to shew cause to the contrary, then on oath made of such notice, such prisoner against whom no prosecution has been within *three terms* then next preceding, shall be discharged out of prison, at the peril of the attorney who shall procure such prisoner to be discharged in form aforesaid.

By rule, *Trin. 2 Geo. 1.* **IT IS ORDERED** by the court, That if any defendant shall be committed to the custody of the marshal of this court, or charged in custody of the said marshal, or arrested or committed by virtue of the process of this court, to the

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the custody of any sheriff or other officer whatsoever, at the suit of any plaintiff, and shall remain in custody for *two terms*, and if the plaintiff shall not declare against such defendant within that time, that then such defendant after the end of the *second term* after such imprisonment, shall be discharged out of the prison where he shall be so detained, on filing common bail signed by one of the justices of this court, without giving notice to the plaintiff or his attorney.

And if such plaintiff shall declare against such defendant a prisoner in custody of the marshal of this court or any sheriff or other officer as aforesaid remaining, and shall not proceed to trial or judgment within *three terms* next after such declaration delivered, or if any plaintiff shall obtain judgment in the court here, in any action against any defendant a prisoner, and shall not charge the said defendant so in prison remaining, in execution on the judgment so obtained within *two terms* next after such judgment so had and obtained, then such defendant so in prison remaining, shall have leave to file common bail, or to sue out a writ of *superfedeas* out of the court here, according to the course of this court for his discharge out of custody as aforesaid, where he shall be so detained, to be granted by one of the justices of this court, if cause shall not be shewn to the contrary by the plaintiff or his attorney, on notice to them

or

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to suit or judgment, or trial or judgment in the court after the expiration of such time, as shall be directed by the court.

By rule, Entry, in C. P. 17. 17. is ORDERED by the court, That every attorney of this court who shall discharge any prisoner charged with any action here in court pending, out of prison for want of prosecution within three days, shall give notice to the plaintiff in such action, or his attorney, to appear before some justice of this court, to shew cause why such prisoner ought not to be discharged for want of prosecution, before he shall prosecute any warrant under the hand of any justice of this court for the discharge of such prisoner out of prison; and if the plaintiff in the same action, or his attorney, on such notice to them or either of them thereof given, shall not appear to shew cause to the contrary, then on oath made of such notice, such prisoner against whom no prosecution has been within three terms then next ensuing, shall be discharged out of prison, at the end of the attorney who shall procure such prisoner to be discharged in term.

By rule, Entry, in C. P. 17. 17. is ORDERED by the court, That any defendant shall be committed to the custody of the marshal of this court, or charged in custody of the marshal, or committed or committed by virtue of the writ of this court, to

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either of them given by the attorney for the defendant, and oath of the said notice to be made, if the said plaintiff shall not appear before the judge aforesaid, to hinder filing the common bail aforesaid, or making the aforesaid writ of *superfedeas*.

How to discharge a prisoner out of the custody of a sheriff or marshal of this court.

By note on rule, *Trin. 2 Geo. 1.*
IN ORDER to discharge a prisoner on the plaintiff's not declaring, a certificate must be had from the clerk of the declarations, that no bill is filed in his office against the defendant, and a certificate of the causes where-with he stands charged from the clerk of the papers of the *King's Bench* prison, if in custody of the marshal, or from the gaoler or keeper of the prison, if in custody of a sheriff or other officer, which being carried to a judge, he will grant an order for a *superfedeas*, notice is required to be given the plaintiff, and affidavit made thereof, if the plaintiff or his attorney does not attend to oppose or consent to his discharge.

Prisoners removed from the Fleet to the King's Bench, to remain there till the fees of the Fleet are paid.

By rule, *Hil. 14 Car. 1.* **IT IS ORDERED** by the court, that every prisoner who shall be removed from the custody of the warden

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warden of the Fleet, to the prison of the King's Bench, by virtue of a writ of *superfedeas*, shall remain in the prison of the King's Bench, and shall not be set at liberty until he has paid the prison fees, due to the warden of the Fleet.

Prisoners committed on habeas corpus to the custody of the marshal, to remain two days, notwithstanding any other habeas corpus.

By rule, *Hil. 2 W. 3. M. 11.*
IT ORDERED by the court, That every prisoner who shall be committed to the custody of the marshal of this court, by virtue of any writ of habeas corpus, or of any writ of *superfedeas*, or of any writ of *habeas corpus*, shall remain in actual custody of the said marshal by the space of two days, next after the commitment of such prisoner to the said marshal, notwithstanding any other writ of habeas corpus, or of any writ of *superfedeas*, or of any writ of *habeas corpus*, issuing out of any other court to the said marshal delivered and allowed.

The marshal of this court to give notice to the prisoner, that he is committed to the custody of the marshal of this court, and to give him the opportunity to give bail.

By rule, *Hil. 28 C. 2. M. 10.*
ORDERED by the court, That the marshal of the King's Bench, shall not receive any person who shall be committed to his custody on any writ of *superfedeas*, or on any writ of *habeas corpus*, until he has paid the prison fees, due to the warden of the Fleet.

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warden of the *Fleet*, to the prison of the *Marshalsea* of this court, by virtue of a writ of *Habeas corpus*, shall remain in the prison of the *Marshalsea* aforesaid, and shall not be set at liberty until he has paid the prison fees, due to the aforesaid warden of the *Fleet*.

Prisoners committed on habeas corpus to the custody of the marshal, to remain two days, notwithstanding any other habeas corpus.

By rule, Hil. 5 W. & M. IT IS ORDERED by the court, That every prisoner who shall be committed to the custody of the marshal of this court, by virtue of any writ of *habeas corpus ad respondend'*, or *ad faciend' & recipiend'*, shall remain in actual custody of the said marshal by the space of *two days*, next after such committal of such prisoner to the said marshal, notwithstanding any other writ of *habeas corpus ad respond'*, or *ad faciend' & recipiend'* issuing out of any other court to the said marshal delivered and allowed.

The marshal of this court to suffer none in his custody or within the rules to go out thereof.

By rule, Mich. 28 C. 2. IT IS ORDERED by the court, That the marshal of the *Marshalsea* of this court for the time being, shall not permit any person whatsoever remaining in his custody on any action, or in examination, or

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on any contempt whatsoever, detained within the said prison, or within the liberty of the rules of the said prison, to go out of the said prison or the liberty aforesaid, without a special rule of this court in that behalf first had and obtained, on the peril that may ensue.

P R I V I L E G E.

King's Bench.

See head attorney.

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Writs of privilege, attachment, or proprium, capias's, of no force, unless stamped by the clerk of the warrants before sealing.

BY rule, Trin. 9 W. 3. IT IS ORDERED by the court, That no attorney shall for the future sue forth or cause to be sued forth in his own name, or at his own suit, any writ of privilege, attachment, proprium, capias, or other such process, and that the green wax, or keeper of the seal of this court, or his deputy, do not hereafter seal any writ of privilege, attachment, proprium, capias, or other such process, unless the same be first stamped or signed by the clerk of the warrants of this court, or his deputy, for which no fee is to be paid, to the intent to shew, that such person is an attorney of this court, duly entered and continued on the roll of attornies, and that every such writ or process, being not stamped or signed as aforesaid by the said clerk of the warrants or his deputy, shall be

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of no force to free such person from arrest, or to require bail, or to give any privilege whatsoever as an attorney of this court.

Writs of privilege to have a judge's hand thereto.

By rule, Trin. 24 Eliz. IT IS ORDERED by the court, That no writ of privilege be granted out of the same court, neither in term nor out of the term, without some one of the justices hand thereunto, for the fee of 4d. and no more, to the justices for every such writ.

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Process not to be made or entered in the name of any person not sworn an attorney or put out of the roll.

BY rule, Hil. 14 & 15 Car. 2. IT IS ORDERED by the court, That no officer of this court do make or suffer to be made, any process or entry in the name of any person not sworn an attorney, nor entered in the roll of attorneys, or in the name of any person put out of the roll of attorneys, either as a discontinuer or for any misdemeanor or by rule of court, after notice thereof given to such officer by the clerk of the warrants of this court, for the time being, or his deputy.

The

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The method of proceeding when copies of process are served on defendants.

By rule, Mich. 1 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this present term, in all cases where a copy of the process of this court is served on any defendant, or defendants, and an appearance is entered for such defendant or defendants by the plaintiff's attorney, pursuant to the said act; the plaintiff's attorney in such case shall leave a copy of the declaration in the office, and likewise give notice thereof to the defendant or defendants, by delivering an *English* notice written in a secretary hand, to such defendant or defendants, or by leaving the same at the last or most usual place of abode of such defendant or defendants, signifying the nature of the action, at whose suit it is prosecuted, and in whose office such declaration is left, and that in case of special writs returnable the first returns of *Hilary* and *Trinity* terms, and the first and second returns in *Easter* and *Michaelmas* terms, such defendant or defendants should take notice, that unless such defendant or defendants plead to such action within *four days* after the appearance day of the return of such writs, and in case of a common *capias* or any other special writ within the *first four days* of the next term, judgment will be entered against such defendant or defendants by default.

And from the time of giving such notice as aforesaid, such
M m decla-

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declaration shall be deemed well delivered to such defendant or defendants and not otherwise.

By rule, Mich. 3 Geo. 2. *IT IS ORDERED* by the court, That on all process sued out of this court, returnable the *first* or *second* return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within *twenty miles* of *London*, the defendant shall plead within *four days* after such declaration delivered without any imparlance, and such declaration may be delivered *de bene esse*, and in case the plaintiff declares in any other county, or the defendant lives above *twenty miles* from *London*, the defendant shall plead within *eight days* after the declaration delivered, without any imparlance, and in default of pleading as aforesaid, the plaintiff may sign his judgment.

In the notice to appear, the day of the return to be inserted.

By rule, Hil. 7 Geo. 2. *IT IS ORDERED* by the court, That in notices to appear, to be served on defendants with copies of process, pursuant to the late act of parliament, the day of the return of such process must be inserted, altho' it happens to be on a *Sunday*.

Officers

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NOT A M

Officers to deliver process to the party himself, or his attorney or clerk.

By rule, Mich. 15 Eliz. IT IS ORDERED, That no officer or clerk of this court, shall either receive, make or deliver any manner of writ, process, record of *nisi prius*, on warrant of attorney, of, to or for any person or persons, to enter any matter or matters, unless the party himself, his attorney, or his attorney's clerk well known, or some other attorney for him, or in his name, do order, deliver or procure, and sue forth the same, on pain to every officer or clerk for every such default, to pay as is above-said 10 l. And that no attorney, attorney's clerk, no officer or any other clerk of this court shall sue forth or procure by any means, directly or indirectly, any *latitat*, or shall solicit, prosecute or follow for the plaintiff, or plead to any action, bill or suit, in any other court than in this court, on pain to forfeit for his first offence 10 l. and for the second *ipso facto* to be expelled the court.

M m 2 P R O-

P R O C L A M A T I O N S.

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On exigents to be delivered to the sheriffs.

BY rule, *Mich. 1654. f. 9. IT IS ORDERED* by the court, That according to the provision of *stat. 31 Eliz.* ALL attorneys that sue out process of *exigent*, be careful that writs of proclamation be delivered to the sheriff to take care duly to execute the same.

P R O T H O N O T A R Y.

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Prothonotaries to attend their offices unless excused by the Chief Justice.

BY rule, *Trin. 35 Hen. 6. IT IS ORDERED*, That every prothonotary, philizer, exigenter, King's clerk, and every other officer of the same place, such and they and their predecessors have used to employ their offices in their proper persons, and they or their deputies sworn, that have used to occupy their offices by their deputies, from henceforth attend upon their said offices in their places accustomed for the same, and occupy them in their proper persons, on pain of forfeiture and losing of their offices. Always foreseen, that if any of the officers for sickness or other causes,

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causes, reasonably to be licensed or excused by the Chief Justice of the same place for the time being, that he be not prejudiced by this ordinance.

Not to license others to sit in their places without leave of the Chief Justice.

By the same rule, IT IS ORDERED by the court, That none of the said officers or deputies take on them to license, or do set any clerk or any other in any of their places, or by them to employ their said offices, or for any other cause without license of the Chief justice for the time being, saving such as be accustomed to have their clerks sitting by them, that is to say, to wit, every of the prothonotaries two clerks, the clerk of the escheats two clerks, the keeper of the writs or his deputy one clerk, on pain of imprisonment, and making a fine to the King.

To sign all exemplifications, executions, and other judicial writs before they are sealed.

By rule, Mich. 1654. sect. 6. IT IS ORDERED by the court, That all executions, and all other writs issuing out of the prothonotaries offices, be duly signed by the respective prothonotaries, before the same be sealed, and that no exemplification of any common recovery, or other record which ought to be examined and signed by the prothonotary, be

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be sealed before the same be signed by the prothonotary, nor that any exemplification (excepting exemplifications of fine and common recoveries of the present or next precedent term) be sealed before they be first signed and examined by the clerk of the treasury.

By rule, Mich. 15 & 16 Eliz. IT IS ORDERED by the court, That all manner of *capias*, *alias* and *pluries*, and all other incident process, before appearance of the defendant, in all actions wherein process of outlawry do lie.

Item, All grand *capias*, *pones*, and *distringaffes*, as well peremptory as infinite, grounded on any original.

Item, All writs of *supersedeas* on any *capias* awarded out of their own offices.

Item, All writs of *return' habendum* on *non suits* before appearance, writs of second deliverance before appearance and declaration, writs of *capias* in *withernam*, *alias* and *pluries*.

What entries to process are to be made by the prothonotaries.

By rule, Trin. 24 Eliz. IT IS ORDERED by the court, That all actions personal, where the debt and damages amounts to 20*l.* or above, the defendant on any *capias* returned against him *cepi corpus*,

be sealed before the same be signed by the prothonotary, nor that any exemplification (excepting exemplifications of fine and common recoveries of the present or next precedent term) be sealed before they be first signed and examined by the clerk of the treasury.

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corpus, or reddidit se, making appearance in proper person, shall put in good bail, that if he be condemned to answer the condemnation, or to yield his body to prison, or the sureties to pay it for him, and the bail to be taken in such office from whence the process on which the defendant so appearing did issue, and in none other, and for the same bail, the defendant to pay the ancient fee 2 s. 4 d. (that is to say) for the fee of the justices of the said court, for examining the sufficiency of the said 1 s. 10 d. and for the fee of the officer taking and entering the said bail 6 d. And that in all other actions personal, where the debt or damages does not amount to 20 l. the defendant to be admitted to common bail, to be taken and entered only by the officer from whence the process on which the defendant shall so appear, did issue, and by none other, for the fee of 4 d. only, to be paid for taking and entering of the same, common bail.

By rule, Easter 12 Jac. 1. IT IS ORDERED by the court, That no clerk or attorney of this court shall make or sue out of this court, any writ of execution on any judgment of this court, except it be first signed by the hand of the prothonotary of this court, in whose office such judgment shall be entered, on pain to forfeit to the poor man's box for the first offence 20 s. and for the second offence to be committed to prison, and to be expelled the court for ever.

Entries

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Entries and process as filacers as well as prothonotaries may make.

First, The views in pleas real, and writs on the same.

Item, Imparlance on plain and common declarations, in pleas personal or mixed, and also the general issue ad patriam in such actions, and all venire facias on such general issues.

Item, In debt, non est factum, general or special so as it needs not a serjeant's council, per minas per duritiam, imprisonamenti, deins age, reins per discent, release or acquittance of the plaintiff, whereunto non est factum is pleaded, condition performed, so as it does not require a serjeant's council, plene administravit ne unques executor.

Item, In trespass, non culpabilis general, and non culpabilis ad novel assignment, son frank tenement, et insult. querent propriis; and in actions on the case, the general issue, and all venire facias on such issue, and to deliver them of record if the party pray it, and continuance on the plea roll, until the habeas corpora awarded.

Item, The fee of every fourpenny writ to be increased and made 6 d. so that the original writ with the return thereof, be duly taken out in the remembrance, and otherwise not.

judg.

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Judgments to be signed only in the proper offices.

By rule, Mich. 6 Geo. 2. **IT IS ORDERED** by the court, That from and after the last day of this term, all judgments signed in causes depending in this court, shall be signed in the office of one of the prothonotaries of this court, and not elsewhere.

Prothonotaries are not to sign records of nisi prius till an incipitur be entered on record.

By rule, Easter, 5 W. & M. **IT IS ORDERED** by the court, That the respective prothonotaries of this court for the future, shall not sign any records of *nisi prius*, until the same or an *incipitur* thereof be fairly entered on record, and the fees first paid for the entry thereof.

Prothonotary not to give licence for the entry of issues of a subsequent term.

By the foregoing rule, **IT IS ORDERED**, That the several and respective officers of this court, shall deliver in all their rolls of *Trinity*, *Michaelmas* and *Hilary* terms, to the clerk of the *essoigns*, before the *essoign-day* of the several terms following, and their rolls, of *Easter term* on or before the first day of *Trinity term* following, and that the officer which shall not bring or send in all his rolls of the said several terms at the times aforesaid, shall

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Fragment to be signed only in the
proper office.

ORDERED by the court That
trial and after the last day of
this term all judgments signed
in cases pending in this court
shall be signed in the office of
one of the prothonotaries of this
court, and not elsewhere.

of the same kind as the one in the
of the same kind as the one in the
of the same kind as the one in the

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the cause of the

By the foregoing reads, it is
ORDERED, That the several
and relative officers of this
court, shall deliver in all their
rolls of Tithes, Acknowledgments
and other rolls, to the clerk of the
said court, before the day of the
next term following, and
the several terms following, and
their rolls of Tithes from the
beginning of the first day of January
next following, and that the rolls
of which shall not bring or tend
to the benefit of the said church,
shall be delivered to the clerk of the
court at the times aforesaid, and

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pay to the clerk of the *effoigni*,
for every roll brought in after,
12*d.* according to the ancient
rule of this court.

Prothonotaries are not to suffer any one but the attorney's known clerk to put his master's name to their remembrances.

By rule, Trin. 24 Eliz. IT IS ORDERED by the court, That no attorney of this court shall suffer or assent to any other being no attorney of the said court, to practice in his name, on pain to be forejudged the court, and committed as is aforesaid, and the party practising in the name of any such attorney, contrary to to this order, to be committed and pay 40s. for a fine for every such offence, and that no clerk of any prothonotary other than such as have exercised the room and place of a clerk by the space of *seven years* last past, shall occupy or use the room and office of an attorney in this court, and that no clerk or servant of an attorney shall write in any office of prothonotary on the like pain and punishment aforesaid.

They are to give an account to the court every term of the rolls, wanting of the preceding term.

By rule, Easter, 34 Car. 2. IT IS ORDERED by the court, That the respective prothonotaries of this court, do and shall the first day of every term for the

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the future, take an account of what rolls are wanting of the precedent term, in their respective offices, and shall respectively render an account thereof to this court, the *second* day of the succeeding term, that so the court may take order for the bringing them in.

They are to examine the recoveries and see that the writs of entry are signed by the Attorney General.

By rule, Easter, 30 Car. 2. IT IS ORDERED by the court, That the prothonotaries in future, on examining and signing of recoveries, shall take care that every writ of entry be signed by the Attorney General, otherwise the said prothonotaries shall not sign the exemplifications until the writ thereof shall be first signed, and the said Attorney General is desired to sign without delay, the said writs delivered to him for his hand to them.

By rule, Easter, 34 Car. 2. IT IS ORDERED by the court, That the prothonotaries of this court take care, and that every one of them in his office respectively, see when he hath examined any recovery by the said writ of entry, that that writ be signed by the Attorney General, and that the prothonotary shall receive no such writ to be filed, unless it hath been signed by the Attorney General aforesaid.

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They are to take the writs and warrants.

By rule, Mich. 29 Car. 2. IT IS ORDERED by the court, as well by the consent of the *custos brevium*, as of the prothonotaries and clerk of the warrants of this court, that at all times hereafter, when the said prothonotaries shall examine and sign the exemplifications of such recoveries, they in their respective offices do then cause all the said writs, being sealed and duly returned, and all warrants of attorney thereupon taken without writ, to be left in their hands to be filed with the usual fees for filing the same without *post terminums*.

And that the said *custos brevium*, and clerk of the warrants or their known deputies, shall receive from the said prothonotaries, in their respective offices, the said writs and warrants of attorney, with the said fees for filing thereof in manner following, to wit, for the said writs and warrants presented, and perfected of this present term, and every other term of *St. Michael* in *Easter* term then next following, and for the said writs and warrants of attorney of every *Hilary* term, in *Trinity* term next after and for the said writs and warrants of attorney of every *Easter* term, in *Michaelmas* term next after, and for the said writs and warrants of attorney of every *Trinity* term, in *Hilary* term then next following.

And

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And that the said *custos brevium* and clerk of the warrants or their deputies, shall give receipts under their hand, of all such writs and warrants as shall be from time to time received from each of the said prothonotaries by way of duplicate, containing the county where the lands lie, the names of the demandants, tenants, and vouchees, who come in by writs of summons, and also of the attornies and clerks names, who presented the said recoveries.

The prothonotaries clerks must enter but in one office.

By rule, Mich. 1654. sect. 6.
IT IS ORDERED, That every prothonotary's clerk, do apply himself from henceforth to one prothonotary's office only, and do give his attendance, and make his entries in that prothonotary's office.

Causes to be proceeded on in the same office in which they began.

By rule, Mich. 1654. sect. 7.
IT IS ORDERED by the court, That the whole proceedings of any cause after appearance be carried on in the office of that prothonotary where it was first entered, or the declaration delivered.

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To prevent attorneys shifting offices, the prothonotaries may search each others docquets, &c. and the fees to be repaid to the prothonotary to whom of right they belong.

By rule, Trin. 21 Car. 2. IT IS ORDERED by the court, this present Trinity term, That every attorney of this court, who at or upon the first day of Easter term, in the 20th year of his Majesty's now reign, or at any time since hath withdrawn himself or any of his causes from that prothonotary's office where he was then settled, unto any other office, do, upon notice of this present order, reduce himself unto that prothonotary's office where he was then settled, and there continue henceforward, cause all his business and causes to be entered and made in the same prothonotary's office only, and in no other office, on pain of incurring the displeasure of this court, and such penalties as this court shall think fit to inflict for the first offence, and for the second offence to be expelled from this court.

AND IT IS FURTHER ORDERED, That no attorney of this court, admitted since the first day of the said Easter term, nor any other attorney hereafter to be admitted without the license of this court, on just cause shewn and allowed by the court first had, shall shift from the prothonotary's office where he has or shall make his own election,

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such warrant to be filed and
before the officers of the court
and within the time
of twenty days next after the
and of every other term.

AND That no officer of the
court do make or suffer to be
made, any process or entry in the
name of any person not lawfully
attorney, nor entered in the roll
of attorneys, or in the name of
any person put out of the roll
attorney, either as a disbarred
number or for any other reason
or by rule of court after notice
thereof given to such officer of
the clerk of the warrants of the
court for the same being, or his
deputy.

IT IS ORDERED
That the clerk of the warrants
of this court for the time being
or his deputy or the person
appointed by the court
to give information to the court
from time to time of breaches
of orders, and infractions of
rules, do make and return to the
court every fortnight or oftener
if required, full and true
return of the same and to the
name and names of every
attorney or attorney-at-law
guilty of such offence
that the court may examine
and punish the same as they
shall think fit. And the
court may, in the exercise
of their jurisdiction, do
what they shall think fit
in the premises.

tion, and be sworn and settled as
aforesaid, on like penalties afore-
said.

**AND IT IS FURTHER
ORDERED**, That no protho-
notary of this court, shall here-
after permit or suffer any such
removing or shifting attorney to
enter any of his causes in this
office contrary to this present
order.

*Officers not to suffer process to be
made by attorneys put out of the
roll, or not sworn.*

By rule, Hil. 14 & 15 Car. 2.
IT IS ORDERED by the court,
That on pain of expulsion from
this court, no attorney of this
court permit any one to practise
in his name.

**AND IT IS FURTHER DE-
CLARED AND ORDERED**
by this court, That every attor-
ney of this court, do from hence-
forth appear in person within the
times in every term before li-
mited and expressed under the
penalties before mentioned for
their defaults.

AND That every attorney of
this court, do file his warrant of
attorney of the term wherein
any *exigent* is awarded, demur-
rer or issue joined, or judgment
entered, or which of them shall
first happen, on pain of 40 s.
for every time he offends and
be attainted, by due examination
made by the justices of this court,
such

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such warrant to be filed on or before the *effoign-day* of every *Trinity* term, and within the space of *twenty one* days next after the end of every other term.

AND That no officer of this court do make, or suffer to be made, any process or entry in the name of any person not sworn an attorney, nor entered in the roll of attorneys, or in the name of any person put out of the roll of attorneys, either as a discontinuancer or for any misdemeanor, or by rule of court after notice thereof given to such officer by the clerk of the warrants of this court for the time being, or his deputy.

IT IS LASTLY ORDERED, That the clerk of the warrants of this court for the time being, or his deputy, or the person appointed yearly by the court, to give information to the court from time to time of breaches of orders, and miscarriages of officers, clerks and attorneys, in every *Michaelmas* term, or oftener if required, shall and may present to the court from time to time, the name and names of every attorney or attorneys offending against this order, to the intent that the court may examine every attorney complained against, concerning any of the matters before rehearsed, and on attainting any such attorney, on due examination had, may inflict such punishment by fine, imprisonment, or expulsion, as the case shall require, or give directions for informations

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formations to be exhibited against the most frequent and notorious offenders for the greater penalties mentioned in the statute thereof made and provided.

Q U I T A M.

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Orders concerning informers and other prosecutors on penal statutes.

BY rule, Hil. 20 Jac. 1. IT ORDERED by the court,

First; That every informer or prosecutor, that shall hereafter exhibit or shew in this court any action, suit, bill, plaint, or information on any penal law, shall within *three days* after the exhibiting thereof, deliver unto the said receivers or collectors, or their deputies, at the public office kept by them for that purpose, a true note, containing briefly and exactly the effect of the said information, action, suit, bill, or plaint, with the names and places of abode of the defendant, and the quality of their offence, to the intent the same may be registred according to the true intent of the said letters patent, or else shall make known at the said office, the place of the said defendant's abode, and leave at the said office a true copy of the said information or plaint, to the intent the said receivers or their deputies, may thereout take such

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notes

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notes to be registred, as they shall think fit.

Item, The said informers and other prosecutors shall deliver into the said office unto the said collectors or their deputy or deputies, a true and brief note of every verdict, judgment, or execution, that shall be given or awarded in the said informations, actions and suits, and that within *three days* after such verdict, judgment, or execution so given or awarded respectively.

Item, That every such informer or other prosecutor shall, within the like space of *three days* as aforesaid, after any licence given for the making of any composition or any fine stricken or assessed for his Majesty, or any composition made, enter the same in this court, and also deliver a brief and perfect note, under his or their hands, expressing truly what licence, fine or composition hath passed therein, unto the said collectors and their deputy or deputies at the office aforesaid.

Item, That every informer or other prosecutor, that shall heretofore, since his Majesty's last general pardon, make any composition which is not recorded or entered in this court, shall, before the end of *Easter* now next ensuing, certify and enter the same truly and justly in this court, upon the said informer's own oath, and also deliver a brief and perfect note thereof to the said collectors

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lectors or their deputies in the said office.

Item, That every informer or prosecutor shall prosecute with effect, without compounding, unless they be licensed by the court to compound, and the licence entered in this court, and a brief note of the same delivered to his Majesty's officers as aforesaid, and that all clerks and officers be careful to perform their duties for levying his Majesty's parts and duties, otherwise on complaint to be made by the said collectors or receivers, or their deputies, condign punishment shall be inflicted on these offenders for their offence or neglect.

Lastly, That the said collectors and their deputies, such as shall be allowed by this court, shall be admitted to have free access unto any office in this court, there in the presence of the principal clerk of the same office, or some other by him to be appointed for that purpose, to view and see, search and examine, all and every the records, rolls, process, files and extreats in the same, or in the custody of any of the officers belonging to the same, which may tend to the discovery and better finding out of any frauds or concealments of the nature aforesaid, concerning any information, licence, composition or judgment on any penal law or statute, and also to take notes or copies of all such informations, bills, complaints, suits, verdicts, judgments, executions, licences and compositions on the same,

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as well for the time past, as the time to come, as they the said receivers or their deputy or deputies, for that purpose appointed, shall think fit, without paying any fee for the same, and that all officers and clerks of this court shall yield them their reasonable furtherance and assistance therein.

Orders set down to be observed in this court, touching pursuits on penal laws.

By rule, 2 Jac. 1. IT IS ORDERED by the court as follows:

First, That special care be taken that no process be suffered to be sued forth upon any information against any penal or popular statute, before the information exhibited, according to *stat. 18 Eliz.* and that the said information be set on the file.

Item, That the information, once set on the file, be not taken from thence.

Item, That the very day of exhibiting the information be set on the back side of the information, and that the informer exhibit the same according to the said statute, and that the informer's name, and the statute on which the information is grounded, be indorsed on the backside of the process.

Item,

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Item, That the informer pursue his suit without any unnecessary delay, or any practice to defraud the due execution of the statute on which he informs, and if any do offend in any thing contrary to *stat. 18 Eliz.* concerning informers, that in every such case the offender be punished according to the true meaning of these several statutes.

Item, That no licence to compound on any penal statute shall be given, nor composition made, but in open court, and both the informer and defendant to be present, and that not to be done but that the informer shall set down on his oath what he will take, and that he hath not taken nor will take any more.

Item, That, at the end of every term, some honest and discreet clerk, for that purpose to be assigned by the court, shall see and make report to the court, what informations or suits upon penal laws be depending, and how they are prosecuted, and whether any default or defraud be in any informer in prosecuting his information, whereby the court may take order for his punishment in that behalf according to the law.

Orders

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Orders to be observed in this court concerning pursuits of informations exhibited on any penal statute.

By rule, Mich. 12 Jac. 1. IT IS ORDERED by the court as follows :

First, That no process shall be awarded on any information exhibited in this court, until such time as the said information be orderly filed in one of the prothonotaries offices of this court, there to remain on the said file, and then the writ of *subpæna* and all other process, to be signed by the prothonotary. All general issues to be marked on the information, and if any clerk do make out any *subpæna*, label or ticket, contrary to this order, that for the first fault he shall pay unto the poor man's box 11 s. and for the second to be expelled the court, and the informer that shall procure any *subpæna*, label or ticket, contrary to this order by their own means, or by any other not a clerk of the court, the said informer to be committed to the *Fleet*, and to make such fine with the King as shall seem fit to the court, that no informer presume to compound for any penalty contained in any such information before the defendant has pleaded to the said information, or confessed the same.

IT IS LIKEWISE ORDERED, That the prothonotaries of this court shall take for the entering of any information and signing of the *subpæna* only 2 s.
8d.

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8*d.* and for the signing of any other process 16*d.* and likewise that the clerk ingrossing the said information, shall receive and take for his pains in that behalf only 8*d.* and for the copy of the said information, if it amount to the number of five leaves of paper and upwards 3*s.* 4*d.* if it be under the number of five leaves, then for every leaf 8*d.* For the making of every *capias pro fine* 6*d.* and for the seal of every *sub-pœna* and *capias pro fine* the farmer of the seal of this court, shall take only 1*d.* for the seal of every other process 7*d.*

AND if it happen that any general issue be pleaded to any information after the term wherein the same information shall be exhibited, that then some known clerk, appointed by the prothonotaries for that purpose, to enter the said general issues on the roll as aforesaid, and he to receive of the defendant for his pains in that behalf, only 3*d.*

ALSO, That no informer presume, directly or indirectly, to take any sum of money or other reward, of any defendant named in any such information, to neglect or foreclose the due presentation of the said information, until he have duly obtained from some of the justices of this court, under his hand, a several licence to compound for every several information so by him exhibited.

LIKEWISE, That after every such license so had and obtained,
and

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and before any composition made, the said informer shall, with all convenient speed, bring the said licence into the prothonotary's office where the information is filed, there to be registred in a book to be kept for that purpose, and the clerk to have 4 *d.* for registring thereof.

ALSO, That every informer, after a composition made for his part of the penalty, by virtue of any such licence, shall, with all convenient speed, make a true certificate, to some one of the judges of this court, on his oath, of all such sums of money as he hath received or shall receive for his composition, which said certificate, together with the said licence, shall be forthwith sent unto the said prothonotary's office, there to be registred in the aforesaid book, under registry of the said licence, to the intent that the justices of the said court, being truly informed thereof, may the better know how to rate and proportion the King's part.

AND if any such composition be made by virtue of any such licence, before the next term following after the granting of the same, yet shall the informer, in the same next term following, certify the same licence as is abovesaid, and for default of such certificate, then an attachment to be awarded against the same informer.

IT IS LIKEWISE ORDERED, That if the defendant in the same informations named,

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after composition made with the informer as abovesaid, do not voluntarily come in to answer unto the King's Majesty, for his fine to be taxed and assessed by the justices of this court for his Majesty's use, then a *capias ad satisfaciendum finem* shall be awarded against him to compel him thereunto, whereupon the fine being set and assessed, shall be presently paid in, and satisfaction being thereupon made and entered by the prothonotary on the roll of the said information, shall be for ever a full and final discharge of the said defendant for the same offence.

ALSO, That every information shall be entered on the rolls of the same term wherein it is exhibited, and that every general issue pleaded to any information shall be entered on the same roll where the information is entered, whether the said issue be pleaded unto the first term or at any time afterwards.

P R O C E E D E N D O.

King's Bench.

A procedendo unless bail on removal by habeas corpus in four days after term and six in vacation.

B^Y note on rule, Mich. 16 Car. 2. If the plaintiff does except against the bail, he may have a rule or warrant for a *procedendo*, unless bail be perfected in

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in four days after service of that rule, whether in term or vacation. After exception a rule for a *procedendo* in four days unless better bail, whether in term or vacation.

P R O V I S O E.

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When trial by proviso may be had, and what notice must be given.

B*Y note on rule, Mich. 4 Ann.* If notice of trial be given for a day certain in *London* or *Middlesex*, and the plaintiff is not ready to proceed, the cause may be tried the next sitting on the like notice as when a *ne recipiatur* is entered by the defendant, and in either case, if the cause be not tried at such next sitting, notice is to be given as at first, unless it be made a *remanet*, and then new notice of trial is never given, for the defendant is bound to attend till the cause be tried.

Both plaintiff and defendant may carry down the record.

By note on the same rule, If the plaintiff does not try his issue within the time he ought by the course of the court, the defendant having given a rule for the plaintiff to enter his issue, (if not already entered) and the issue being entered may have a *venire* by *provisoe* and try the cause; if the plaintiff does not enter his

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issue within the time allowed by rule, he shall be *non-suited*, and the defendant shall have his costs.

Note. Trials by provisoe are now out of use, and if the plaintiff in any action neglects to bring such action on to be tried, the court at any time on notice in open court (on due notice given the plaintiff's attorney) will give judgment for the defendant as in case of a nonsuit, unless sufficient cause be shewn to the contrary, when the court will grant time, but if the plaintiff neglects to try the cause within the time allowed by the rules of the court, they will make a rule *nisi* for judgment for the defendant, as in case of a nonsuit.
Stat. 14 Geo. 2.

RECORDS OF NISI PRIUS.

King's Bench.

Records of nisi prius in London and Middlesex to be sealed on or before the day appointed by the Chief Justice.

BY rule, *Easter, 7 Geo. 1:*
IT IS ORDERED by the court, That all records of *nisi prius* in *London and Middlesex*, be sealed on or before the respective days appointed (by the Lord Chief Justice) in the sittings paper for their trial.

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No record of *nisi prius* to be sealed before the issue or an *incipitur* be entered on the roll, and both brought to the secondary to be signed.

By rule, Mich. 5 Ann. IT IS ORDERED by the court, That no record of *nisi prius* shall be sealed or passed at the *nisi prius* office by the *custos brevium* of this court, or any clerk of that office before the issue in the cause be fairly entered on record, or an *incipitur* thereof and such entry with the record of *nisi prius* be first brought to and signed by the secondary of this court for which no fee shall be demanded or paid, but the usual and accustomed fee due to the chief clerk of the court for the entry of such issue on record.

AND IT IS FURTHER ORDERED, That every attorney shall bring in all his rolls into the office, fairly engrossed in a full court hand, by the times limited by the former rules, that is to say, the rolls of *Trinity*, *Michaelmas* and *Hilary* terms before the *essoign-day* of every subsequent term, and the rolls of *Easter* term before the first day of *Trinity* term, and that no attorney at large or any other person, shall take any numbers or file any rolls but the clerks of the chief clerk of this court only.

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No record of *nisi prius* to be signed before the issue or an *incipitur* be entered on the roll.

By rule, Easter, 5 W. & M. The same practice as in K. B.

When

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When records of nisi prius for trial at the assizes are to be sealed.

By rule, Trin. 31 Car. 2. **IT IS ORDERED** by the court, That no record of *nisi prius* for the trial of an issue at the assizes shall be sealed after the end of three weeks next after the end of the term.

The attornies of this court who attend at the assizes, to pay no more than the attornies of the Common Pleas for putting in the record.

By rule, Mich. 13 Jac. **IT IS ORDERED** by the court of the said Lord the King here, that hereafter no attorney of this court for the putting in any record of *nisi prius* before any justice of assize wherein he shall be named attorney in the record, and shall be attending at the assizes about the trial of such record, shall pay or be compelled to pay more or a greater sum of money than the attornies of the court of *Common Pleas* at *Westminster* in such cases pay, and have been accustomed to pay, but that the fees of the attornies of this court shall be allowed them at the assizes aforesaid.

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In causes to be tried in the circuits, the writ and record to be entered together.

By rule, Trin. 10 & 11 Geo. 2. IT IS ORDERED by all the Judges of *England*, That in every cause to be tried before them in their respective circuits, the writ and record shall be entered together, and that no record shall be received without the writ.

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In causes to be tried in the circuits, the writ and record to be entered together.

The same practice as in *K. B.*

Records of nisi prius for the trial of issues at the assize to be signed by the prothonotary, and signed and sealed by the clerk of the Treasury within three weeks after every issuable term, and not afterwards without special order.

By rule, Trin. 29 Car. 2. IT IS ORDERED by the court, That the records aforesaid issuing out of this court, shall be signed by the respective prothonotaries of the said court, and signed and sealed by the clerk of the Treasury, or other person deputed in thar behalf, within the space of three weeks next after the end of this term, and within the same space next after the end of every term of *St. Hilary*, and [of every term of the *Holy Trinity* for the future, and not afterwards, unless for a reasonable cause, a special warrant shall be obtained for that purpose.

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The records are not to be signed or sealed till the warrants of attorney are filed,

By rule, Hil. 2 & 3 Jac. 2. IT IS ORDERED by the court, That the clerk of the Treasury for the time being, shall not for the future sign or seal any record of *nisi prius*, unless the same be first signed or stamped by the clerk of the warrants or his deputy, to the end it may thereby appear that the warrants of attorney are duly filed,

The records of nisi prius to be of the exact breadth of the rolls, and fairly ingrossed.

By rule, Trin. 29 Car. 2. IT IS ORDERED by the court, That the respective prothonotaries do take care that every record of *nisi prius* that is signed by them, be ingrossed in a fair legible character, and so entered on the roll, and that at the beginning of every pleading, it be begun with a new line, and the first word thereof in a greater character than the rest, and that in all actions that have divers narrs, they give notice thereof by figures in the margin of such record of *nisi prius*, and in default thereof the said prothonotary sign not the same.

AND IT IS LIKEWISE ORDERED, That the respective clerks of the Treasury of this court, that do ingross records of
nisi

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nisi prius, from thence do from time to time take the same care of all records made out of the said Treasury.

AND that all the records of *nisi prius* that shall be ingrossed in this court for the future, be of the exact breadth of the rolls of this court, and not broader or lesser,

The records of nisi prius to be brought in before the sittings.

By rule, Hil. 8 Geo. 1. **IT IS ORDERED** by the Chief Justice of the court, That *ne recipiaturs* shall be allowed to be entered for the sittings of *nisi prius* after every term, unless the record of *nisi prius* and writs be made up and brought into court on or before the days and sittings respectively.

How and when the records of nisi prius are to be made up.

By rule, Hil. 11 Geo. 1. **IT IS ORDERED** by the court, That every issue shall be entered on record of the term in which it was joined, notwithstanding any consent given by the attornies or their agents on either side to the contrary, and that whosoever shall offend in breach of this rule, shall be adjudged guilty of a contempt of this court, and shall be proceeded against accordingly.

AND

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AND IT IS FURTHER ORDERED, For the more effectual detecting any such intended fraud, it shall and may be lawful for the clerk of the Treasury to require any person suspected of such illegal practice as aforesaid, to produce such proceeding in the cause as he the said clerk of the Treasury shall think necessary for the better discovering when issue was actually joined.

R E C O V E R I E S.

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Precipes for recoveries to be entered on the remembrance roll.

BY rule, *Trin. 10 Geo. 2.* All recoveries and writs of *scire facias* be entered in the office on the remembrance of each respective prothonotary to whom they belong, and that henceforth no remembrances will be lent out for that purpose.

Writs of entry to be signed by the Attorney General.

By rule, *Easter, 30 Car. 2.* **IT IS ORDERED** by the court, That the prothonotaries for the future, on examination and signing of such recoveries, shall take care that every such writ of entry be signed by the said Attorney General, otherwise the said prothonotaries shall not sign such exemplifications until the writ thereof shall be signed, and the said Attorney General is desired to sign without delay the said writs delivered to him for his hand to them.

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On examining recoveries, the writs and warrants of attorney to be left with the prothonotary, with the fees for filing due to the *custos brevium* and clerk of the warrants.

By rule, Mich. 29 Car. 2. **IT IS ORDERED** by the court, as well by the consent of the *custos brevium* as of the prothonotaries and clerks of the warrants of this court, that at all times hereafter, when the said prothonotaries shall examine and sign the exemplifications of such recoveries, they in their respective offices, do then cause all such writs being sealed and duly returned, and all warrants of attorney thereupon taken without writ, to be left in their hands, to be filed with the usual fees for filing the same without *post terminums*.

AND, That the *custos brevium* and clerk of the warrants or their known deputies, shall receive from the said prothonotaries in their respective offices, the said writs and warrants of attorney, with the said fees for filing thereof in manner following, to wit, for the said writs and warrants prosecuted and perfected of this present term, and every other term of St. Michael in Easter term next following, and for the said writs and warrants of attorney of every Hilary term, in Trinity term next after, and for the said writs and warrants of attorney of every Easter term, in Michaelmas term next after, and for the said writs and warrants of attorney of every Trinity term, in Hilary term then next following.

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AND that the said *custos brevium* and clerk of the warrants or their said deputies shall give receipts under their hands of all such writs and warrants as shall be from time to time received from each of the said prothonotaries by way of duplicate, containing the county where the lands lie, the names of the demandant's tenants and vouchees, who come in by writs of summons. And also of the attornies and clerks names who prosecuted the said recoveries.

By rule, Easter, 30 Car. 2. IT IS ORDERED by the court, by the assent of the *custos brevium*, prothonotaries and clerk of the warrants of this court, that whenever the said prothonotaries in their offices respectively should examine and sign any recovery by the court here exemplified, the said prothonotaries should see that the writs and warrants aforesaid should be duly executed and returned, and left in the hands of those prothonotaries respectively with the usual fees for the filing of the same. NOW on complaint of Sir William Jones, Attorney General of our Lord the King, to the Justices of this court made, that certain attornies and clerks of this court, have neglected to bring their writs of entry to be signed by him the said Attorney General under his hand, as belongs to his office, according to the ancient course in fraud of the said Attorney General of his fees in that behalf.

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IT IS ORDERED, that the said prothonotaries for the future, on examination and signing of such recoveries, shall take care that every such writ of entry be signed by the said Attorney General; otherwise the said prothonotaries shall not sign such exemplification until the writ thereof shall be so signed, and the said Attorney General is desired to sign without delay the said writs delivered to him for his hand to them.

Writs relating to fines and recoveries to be duly returned and filed on pain of fine and amerciamment.

By rule, Trin. 22 Car. 1. IT IS ORDERED by the court, That all attornies clerks, sheriff's deputies and officers, be from henceforth more careful to file their writs of covenant, entry, summons, and seifins, and other writs in the statute mentioned, and to make due returns thereof, and to do all other things pertaining to their several offices which the law requires to be by them performed touching the said fines and recoveries, on pain of such fines and amerciaments as the court may assess upon them by the said statute, which this court declares they will from time to time put in full execution according to the said act of parliament for the punishment and prevention of the great mischiefs which shall or may happen by such misprisions, neglects and contempts as aforesaid.

R E P L I.

REPLICATIONS, REJOINDERS, &c.

King's Bench.

What time to reply on rule given by secondary.

BY *note on rule, Trin. 1 Geo. 2.* On all special rules given by the secondary as to reply, rejoin, sur-rejoin, rebut, plead in bar, join in demurrer, enter the issue, or demur on the part of the defendant, the party who is to do the act, is to be served with a copy of the rule, and hath four days time exclusive after the service of the rule to reply, rejoin, &c. and if judgment be signed, or other proceedings had within that time, the same shall be set aside.

A term's notice to reply if no proceedings in four terms.

By note on rule, Trin. 5 & 6. Geo. 2. If four terms are elapsed after the declaration is delivered, the defendant shall have a whole term's notice to plead before judgment can be entered against him, or if a cause has continued four terms without prosecution before issue joined, each party shall have a whole term's notice to reply, rejoin, &c. unless the cause has been stayed by injunction or privilege.

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What

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What time to reply after oyer of a deed mentioned in the plea.

By note on the foregoing rule, If the plaintiff in his declaration sets forth a *profert in cur.* of any deed, writing, letters of administration, or the like, the defendant may pray *oyer*, and must have a copy thereof delivered to him, paying for the same after the rate of 4d. per sheet, and also for the stamps, and shall have such time to plead after the delivery as he had when he demanded *oyer*.

The same practice holds if the defendant in his plea make a *profert in curia* of any deed, &c. the plaintiff may pray *oyer* and shall have a copy at the like rate, and the same time to reply as he had at the time of demanding *oyer*.

R O L L S.

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No numbered rolls to be delivered to any but the clerks of the chief clerk.

BY rule, Mich. 1654. sect. 14. *IT IS ORDERED* by the court, That no rolls be delivered to be entered but to the prothonotaries clerks.

That no rolls be carried into the country under pain that the offender be excluded from entering any more rolls afterwards as a clerk.

The

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The rolls are now delivered to attornies as well as the clerks.

By rule, *Mich. 5 Ann.* **IT IS ORDERED**, That every attorney shall bring in all his rolls into the office fairly ingrossed in a good full court hand, by the times limited by former rules, (that is to say) the rolls of *Trinity*, *Michaelmas*, and *Hilary* terms, before the *essoign-day* of every subsequent term, and the rolls of *Easter* term, before the first day of *Trinity* term, and that no attorney at large or any other person shall take any numbers or file any rolls but the clerks of the chief clerk of this court only.

No rolls to be carried into the country.

By rule, *Mich. 1654. sess.* **IT IS ORDERED**, That no rolls be carried into the country under pain that the offender be excluded from entering any more rolls afterwards as a clerk.

No rolls to be received or allowed for by the clerk of the Treasury, unless marked by the person appointed by the Chief Justice to deliver out the rolls.

Trin. 12 G. 2. 1738. Complaint having been made to the Lord Chief Justice of this court, by *S. B. stationer*, that several persons presume to deliver out the rolls of this court without any appointment for that purpose. This is therefore to give notice,

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No rolls to be carried into the country.

By rule, *Easter, 12 Jac. 2.* **The same practice as in K. B.**

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notice, that from and after the end of this present *Trinity* term, no roll or rolls will be received and allowed for by the clerk of the Treasury of this court, unless the said rolls are marked with the said *S. B.*'s mark.

The rolls of Trinity, Michaelmas, and Hilary terms to be brought in before the assign-day of every subsequent term, the rolls of Easter, before the first day of Trinity term.

By rule, *Mich. 5 Ann. IT IS ORDERED* by the court, That from and after the first day of next *Hilary* term, every judgment in debt, case, covenant, trespass, trover, or any other action, shall be entered fairly on the roll, or an *incipitur* thereof before such judgment shall be signed by the secondary or any Justice of this court, and the names of the plaintiff and defendant with the county where the action is laid, and the nature of the action, with the attorney's name, shall be entered in a book to be kept by the secondary of the court for that purpose, for which nothing shall be paid but the ancient and accustomed fee for entring such judgment.

AND IT IS FURTHER ORDERED, that no record of *nisi prius* shall be sealed or passed at the *nisi prius* office by the *custos brevium* of this court, or any clerk of that office, before the issue of that cause be fairly entered on record or an *incipitur* thereof

thereof, and such entry with the record of *nisi prius* be first brought to and signed by the secondary of this court, for which no fee shall be demanded or paid, but the usual and accustomed fee due to the chief clerk of this court, for entry of such issue on record.

By whom and in what manner entries are to be made on the rolls.

By rule, Hil. 1657, **IT IS ORDERED** by the court, That according to the ancient usage and custom of the court, none be permitted to enter any cause on judgment on the prothonotaries rolls, but the prothonotaries or their clerks to whom the entering thereof does of right belong, and that all the rolls be entered in a full fair hand, with a large margin of an inch at least, and a convenient distance at the top for the binding up of the same, and at the bottom that the writing be not rubbed out.

Item, That none be suffered to have access unto the rolls or records, files of declarations, writs or bails, but clerks of the office, or filacers, who may be answerable for any misdemeanors which shall be objected against them.

Item, That none do deliver any copies of special verdicts or demurrers to the justices of this court, but the clerks of the office, who ought to copy and deliver them, and are to examine them and see they be true, and be answerable for any mistake in the same.

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Item, That no *postea*s be delivered out of court to any person whatsoever, but to the prothonotaries or their clerks, or to the filacer of this court, who may be answerable for the same, in case any complaint shall be objected against them.

Item, That if any clerk of the office shall permit or suffer any other whatsoever to write or set his name to any accountable writ or writs that are to be signed, or to any other writ that belongs to the prothonotaries of this court and their clerks, to make but such as shall be written by the hand writing of the said clerk or his servant, that he or they shall for the first offence in that kind forfeit 20s. and for the second offence shall be expelled out of the office.

Warrants of attorney to be entered on the roll at the beginning of the cause, otherwise the roll not to be received or filed.

By rule, *Easter, 4 Jac. 2.* *IT IS ORDERED* by the court, That every clerk and attorney of this court, who hereafter shall enter any cause of record, shall enter in the beginning of every cause so entered, the warrants of attorney for the plaintiff and defendant in such causes, otherwise their rolls shall not be filed or received.

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No plea roll to be filed after the term following that of which it ought to be filed of.

By rule, Easter 9 W. 3. IT IS ORDERED by the court, That no plea roll be filed after the end of the next subsequent term, of which it ought to be filed, unless leave shall be given to do it by rule of court, and the secondary shall subscribe such rule.

The clerk of the Treasury to appoint one to attend, that access may be had to the rolls.

By rule, Trin. 1654. IT IS ORDERED by the court, That the clerk of the Treasury should appoint one to attend in the Treasury aforesaid, whereby the clerks of this court may have access to search the records according to ancient custom.

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The common rolls of Trinity, Michaelmas, and Hilary terms, to be brought in before the essoign-day of the following terms, and the rolls of Easter before the first day of Trinity term on penalty of 12 d. each roll.

By rule, Easter, 5 W. & M. IT IS ORDERED by the court, That the several and respective officers of this court, shall deliver in all their rolls of Trinity, Michaelmas, and Hilary terms to the clerk of the essoigns before the essoign-day of the several terms following, and their rolls of Easter term on or before the first day of

✠ R r Trinity

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Trinity term following, and that the officer which shall not bring or send in all his rolls of the said several terms at the times afore-said, shall pay to the clerk of the *essoigns* for every roll brought in 12d. according to the ancient rule of this court.

The clerk of the essoigns to lay before the court every term an account of the rolls wanting.

By rule, Mich. 2 Geo. 1. IT IS ORDERED by the court, That the clerks of the *essoigns* do a fortnight within every term lay before the court an account what rolls are wanting, that ought to have been brought in, according to the said rules, together with the attornies names who took them out of the said offices, that this court may proceed as they shall think fit against such persons as shall not have brought in their rolls according to the said rules.

Attornies on the receipt either of common or plea rolls only to sign the prothonotaries book.

By rule, Easter, 34 Car. 2. IT IS ORDERED by the court, That for the future every attorney or clerk that shall receive any roll, either plea or common, from the respective prothonotaries of this court, shall sign and set his own hand to such prothonotaries book from whom they shall receive the same, for the receipt of such roll or rolls, and that no protho-

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prothonotary do deliver any rolls to any other but to the proper hands of some known attorney or clerk of their respective offices.

That no rolls be delivered to be entered but to clerks and to entering attornies.

By rule, Mich. 1654. sect. 5. IT IS ORDERED by the court, That no rolls be delivered to be entered, but only to clerks or such attornies as have entered for the space of *four years* last past for themselves.

A table to be set up of the names of those who may come to the rolls in the Treasury.

THAT a table be set up of the names of the officers and clerks that are to be admitted unto the rolls of the Treasury, and that such and no others shall be admitted thereunto, and that they may resort there as well for their occasions as for their learning and instructions during the term, and also twice in every week from a month after the term, and that every such clerk duly attend, as well the prothonotaries office in term time, as for the entring judgments on summons given by the prothonotaries respectively.

The

King's Bench

Common Pleas.

The rolls brought to the prothonotaries to be delivered to the clerk of the warrants before the effoign-day of the ensuing term.

By rule, Mich. 1654. sect. 7. IT IS ORDERED by the court, That the common rolls of every term, except *Easter*, be brought into the prothonotary fairly entered and docketed, at least *ten days* before the *effoign-day* of the succeeding term under pain of 10 s. for every roll wanting.

The clerk of the warrants to deliver the common rolls to the clerk of effoigns, in five days after brought in, who is to bind them up.

By rule, Mich. 1654. sect. 7. IT IS ORDERED by the court, That the clerk of the warrants within *five days* after the receipt of the rolls from the prothonotary do deliver over the common rolls to the clerk of the *effoigns*, and also an account of the rolls wanting.

That the clerk of the *effoigns* bind up the rolls, viz. the first part before the appearance day of the second return, and the second part before the *effoign-day* of the third return, and the third part before the *effoign-day* of the next term.

R U L E S.

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Common Pleas.

Notice to be given of motion to enlarge a rule for shewing cause and affidavit made of such notice.

By rule, Mich. 2 Geo. 2. **IT IS ORDERED** by the court, That no rule for shewing cause be enlarged, unless notice be given of motion to enlarge such rule, and affidavit made of such notice. And likewise that the court will not set aside any judgment for irregularity, unless motion be made to the court for that purpose, before a writ of enquiry executed.

Rules to bring in the body, to be given by the proper filacer.

By rule, Trin. 2 W. & M. **IT IS ORDERED** by the court, this present Trinity term, That all rules for the sheriff to bring in the body of a prisoner, taken upon any process which hath or shall issue, or which ought to issue out of the office of any filacer be for the future given by the filacer from whom such process issued or ought to have issued, and by no other thereof and the attorneys, clerks, undersheriffs of the several counties, and all others whom it may concern, are to take notice.

As:

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After a motion and rule thereon, made in the presence of counsel, the court is not to be again moved contrary to that rule.

By rule, Hil. 3 Jac. 2. IT IS ORDERED by the court, That if any cause shall first be moved in court in the presence of the counsel of both parties, and the court shall then thereupon order between those parties, if the same cause shall again be moved contrary to that rule so given by the court, then an attachment shall go against him who shall procure that motion to be made contrary to the rule of court so first made, and that the counsel who so moves, having notice of the said former rule, shall not be heard here in court, in any cause in that term, in which that cause shall be so moved contrary to the rule of court in form aforesaid.

Rules made after the third day after any term, are void.

By rule, Trin. 14 Car. 2. IT IS ORDERED by the court, That all attornies of this court shall appear in court in their proper persons on or before the 14th day of the term of *St. Michael*, and on or before the 7th day of every other term under the penalty of forfeiting for the first default 10s. and for the second 20s. and that every attorney shall enter in the office of this court all pleas and demurrers in law within *three days* after the end of every term, and that no rule shall be made by

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any justice of the court of the Lord the King, before the King himself, in any action in the said court pending, after the third day next after the end of any term; and that no attorney of the said court shall attend any of the said justices to make any rules after the third day next after the end of any term, and that such rules shall be made peremptory to attend after the third day after the end of any term, and that all rules made after the third day after the end of any term shall be void.

Summons's to attend, orders made, or other matters transacted by a judge at his chambers during the sitting of the court to be void.

By rule, *Mich. II Geo. I. IT IS ORDERED* by the court, That no attorney or other person shall be summoned to attend any justice of this court, nor any matters be transacted before such justice at his chambers, or elsewhere out of court, during the sitting of this court at *Westminster*, and all orders and other transactions to be made by such justices shall be vacated.

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S C I R E F A C I A S.

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Precipes for writs of scire facias to be entered on the remembrance.

BY rule, Trin. 10 Geo. 2. **IT IS ORDERED** by the court, That, from and after the first day of next *Michaelmas* term, all *precipes* for recoveries and writs of *scire facias* be entered in the office on the remembrance of each respective prothonotary to whom they belong, and that henceforth no remembrances will lent out for that purpose.

There ought to be fifteen days between the teste and return of every writ of scire facias by original.

By rule, Easter, 5 Geo. 2. **IT IS ORDERED** by the court, That, from and after the last day of this term, every writ of *scire facias*, of which notice shall be given to the defendant or defendants named in such writ, shall be delivered to or left in the office of the sheriff to whom directed, *four days* before the return of such writ, exclusive of the day on which such writ is returnable.

And that every first writ of *scire facias* on which a *nihil* shall be returned, shall be delivered to or left in the office of the sheriff some time before the return of such writ, and every sheriff shall write or indorse on every such writ the day of the month in which the same is delivered to him or left in his office.

By

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By note on this rule, Every *scire facias* by original ought to have fifteen days exclusive between the teste and return, and are made out by the filacer of the county.

If the proceedings are by bill, fifteen days inclusive between the teste of the first and return of the *alias scire facias* are sufficient, and such *scire facias* should have seven days between the teste and return, but if one *scire facias* only issue and a *scire feci* be returned, the time between the teste and return is not settled.

Nor is the time settled for warning the defendant before the return of the writ, but it is said, if the defendant be summoned the day before, or even on the day of the return of the writ, it is sufficient.

The first *scire facias* against bail ought to bear teste the day of the return of the *ca. sa.* and the second *scire facias* the day of the return of the *first*, and delivered or left in the sheriff's office as directed by the foregoing rule.

At the return of the *second scire facias*, or of the *first*, if a *scire feci* be returned, a rule must be given for the defendant, or bail, as the case is to appear, and then the *scire facias* awarded on the roll.

Where two *scire facias*'s issue returnable in different terms, the *first* must be entered of the term wherein it is returnable, and an award of the *second* is sufficient without setting it forth at large.

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S E A L O F F I C E .

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The keeper of the seal not to seal any writ of privilege, attachment, or proprium capias, unless first signed or stamped by the clerk of the warrants.

BY rule, Trin. 9 W. 3. IT IS ORDERED by the court, That no attorney shall for the future sue forth, or cause to be sued forth, in his own name or at his own suit, any writ of privilege, attachment, or *proprium capias*, or other such process, and that the green wax, or keeper of the seal of this court, or his deputy, do not hereafter seal any writ of privilege, attachment, *proprium capias*, or other such process, unless the same be first stamped or signed by the clerk of the warrants of this court, or his deputy, for which no fee is to be paid; to the intent to shew that such person is an attorney of this court, duly entered and continued on the roll of attorneys, and that every such writ or process being not stamped or signed as aforesaid, by the said clerk of the warrants, or his deputy, shall be of no force to free such person from arrest, or to require bail, or to give any privilege whatsoever as an attorney of this court.

Clerk

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Clerks of the seal office not to seal writs issuing out of the filacer's office, unless the filacer's stamp appear thereon.

By rule, Trin. 1654. IT IS ORDERED by the court, That writs issuing out of the filacer's office be stamped by the respective filacers, so as the clerks of the seal office may know it has passed the filacer.

AND IT IS FURTHER ORDERED, That the clerks of the seal office shall not seal any of the said writs, whereupon there shall not be the filacer's stamp as aforesaid; and the attornies and others, whom it may concern, are to take notice that the court will duly put the law in execution against such as shall offend in the premises, and the filacers likewise are hereby to take notice, that the court doth expect they should procure the original to be duly sued forth and filed, according to their oaths and duty of their places, and that the court will severely punish their neglect therein.

Exemplifications, executions, and other judical writs, to be signed before they are sealed.

By rule, Mich. 1654. sect. 6. IT IS ORDERED by the court, That all executions, and all other writs issuing out of the prothonotaries offices, be duly signed by the respective prothonotaries before the same be sealed, and that no
exem-

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exemplification of any common recovery, or other record which ought to be examined and signed by the prothonotary, be sealed before the same be signed by the prothonotary, nor that any exemplification (except exemplifications of fines and common recoveries of the present or next precedent term) be sealed before they be first signed and examined by the clerk of the Treasury.

The custos brevium, filacer, and exigenter, are not to receive process, unless it be apparently duly sealed.

By rule, Trin. 24 Eliz. IT IS ORDERED by the court, That the *custos brevium*, his deputy or clerk or any of them, from henceforth shall not receive any process of any exigenter, filacer, attorney or other clerk, or any of them, except the same process be at such delivery thereof apparently sealed with the Queen's Majesty's seal of this court.

AND FURTHER, That any filacer or exigenter of this court, or any of them, or the clerks of any of them, shall not from henceforth take any process of any person or persons, to the intent to take out the same process in their remembrances, or to file the same with the *custos brevium*, unless the same process be delivered unto them apparently sealed, on such pain and penalty as shall be inflicted on every offender herein by the justices of the court.

SECON-

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On request to shew their alphabetical paper of ejectments.

BY rule, *Hil. 2 Geo. 2.* *IT IS ORDERED* by the court, That the secondaries shall in the morning next after the end of every term, and at all other times when required, produce and shew to any person or persons who shall demand the same, their alphabetical paper of *ejectments*, moved or delivered into court in each term in manner afore-said.

Not to file affidavits taken before persons not lawfully commissioned, and to keep books of the names of persons lawfully authorized.

By rule, Trin. 2 W. & M. *IT IS ORDERED* by the court, That the secondaries of the several offices shall not file any affidavits taken before any person that is not commissioned to do the same, and to that end books of the names of all such persons as are or shall be lawfully authorized to take affidavits in the country, to be made use of in this court, shall be delivered to and kept by the said secondaries, and that no affidavit shall be read in court before the same be filed.

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*To set down on the remembrances
when rules are given.*

By rule, Mich. 1654. sect. 15.
IT IS ORDERED by the court,
 That no judgment by *nihil dicit*
 be entered, until there be a rule to
 plead first given in that protho-
 notary's office where the same is
 entered, and the day by such rule
 be passed, and that such rules be
 only given in bills of pleas, or
 other remembrances for that pur-
 pose only, to be in the custody
 of the secondary of the respective
 prothonotaries during the time
 limited for giving of rules, to the
 intent that all persons concerned
 may have recourse to the said se-
 condary, and to see the same
gratis; and that clerks, who usu-
 ally enter for attornies, may give
 rules for answer in the said re-
 membrances in all their own
 names wherein there have been
 imparlances, except in eject-
 ments, so as they enter the same
 rules in the office, without car-
 rying any of the said remembran-
 ces out of the office aforesaid, and
 that the secondary set down on
 the remembrances the day where-
 on such rules are given.

S E R J E A N T S.

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On taking excessive fees and not attending the cause, the court on complaint will order restitution on pain of not being suffered to practice.

BY rule, Hil. 14 Jac. 1. **IT IS ORDERED** by the court, That if any serjeant or counsellor at law, shall take any fee to be of council with any, and to be with him for any time certain for any cause, and shall not attend the same cause accordingly, that then on complaint made, or information thereof given to the judges of that court where the cause shall be depending, or any of them, the judges by their discretion, shall give order for the repayment and satisfaction thereof to the client,

Attornias not to be allowed fees disbursed to serjeants where the general issue is pleaded.

By the foregoing rule, **IT IS ORDERED**, That no attorney nor solicitor shall take any allowance of or for any fee disbursed by him to any serjeant or counsellor, in case where the *general issue* is pleaded, or for procuring to have or make an answer without having a ticket subscribed by the proper hand and name of the said serjeant or counsellor, testifying what fee he has received or for whom, on pain to be excluded the court, and from the

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practice of an attorney or solicitor for ever; and to make restitution to the party so much as he shall take allowance of; and if any counsellor at law shall so affirm under his hand that he has received more than was delivered to him in truth, that then such counsellor shall be excluded from any further practice in that court where the cause is depending, at and by the discretion of that court, and that no attorney or solicitor shall take any allowance of or for any fee disbursed by him to any serjeant or counsellor in any other case then is before set down; but that he shall truly set down the counsellor's name, what fee he has disbursed, and to whom, and take his oath (if the party does require it) before some judge in the court where the cause depended, that he truly disbursed the said sum to the said serjeant or counsellor, on pain as is aforesaid.

S E R I F F S.

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To return process of the court in six days after they are served with a peremptory rule, or liable to attachment.

To return process of the court in six days after they are served with a rule for that purpose, or they are liable to pay the costs occasioned by the neglect.

BY rule, Mich. 6 Geo. 2. The same practice as in C. B.

BY rule, Hil. 8 Geo. 1. IT IS ORDERED by the court, That from and after the last day of this present Hilary term, if any sheriff, under-sheriff, or any

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Sheriffs, under-sheriffs, not to delay execution of process, or return of writs, or take undue fees, or detain money.

By rule, Mich. 1654. sect. 2. The same practice as in C. B.

of the officers or persons above named, or any officer or person having the return of any process issuing out of this court, or of any precept or warrant thereupon, shall neglect or refuse to return the same within *six days* next after service of a rule of this court for that purpose, such sheriffs, under-sheriffs, and every other of the above named officers or persons, shall be liable to pay the costs occasioned by such neglect to be taxed, any rule or order to the contrary notwithstanding.

Sheriffs, undersheriffs, &c. delaying the execution or return of process, taking undue fees, giving the defendant notice, or detaining money levied, liable to punishment.

By rule, Mich. 1654. sect. 2. IT IS ORDERED by the court, That for the prevention and remedy of delays and abuses in sheriffs, under-sheriffs, bailiffs of liberties, and their deputies, and other bailiffs of sheriffs, &c. in execution of process and writs, that if it shall appear that any such officer wilfully delay the execution or return of any process or execution, or shall take or require any undue fees for the same, or shall give notice to the defendant, thereby to frustrate the execution of any process or writ, or having levied money, shall detain it in their hands after the time of the return of their writs, besides the ordinary course of amerciaments, (the contempt

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or misdemeanor appearing) an attachment, information, commitment or fine, to be as the case requires; and this as well in the case of a late sheriff or person before mentioned, as of them at present in office.

Sheriffs, bailiffs, &c. not to enlarge persons arrested on capias utlegatum, without supersedeas, on penalty of 40 s. and further punishment.

By rule, Mich. 1654. sect. 9. IT IS ORDERED by the court, That no sheriff, undersheriff, their deputies or bailiffs, may from henceforth discharge or set at liberty any person or persons arrested upon any *capias utlegatum*, until he receive a *supersedeas* according to law, from the officer or officers thereunto appointed.

Under-sheriffs, and county clerks not to return a reddidit se where the defendant hath not rendered himself on the exigi facias.

By rule, Easter, 24 Car. 2. IT IS ORDERED by the court, for the prevention of such like frauds, deceits, and evil carriages for the future, that no undersheriff or county clerk of any county within this realm, nor any attorney or other minister of this court, shall return or cause to be returned on any writ of *exigi facias* issuing out of or return

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turnable in this court, any false return of *reddidit se*, where in truth the defendant has not rendered himself to the sheriff.

To duly execute proclamations on exigents.

By rule, Mich. 1654. *sect. 9.*
IT IS ORDERED by the court, That according to the provision of *stat. 31 Eliz.* All attorneys that sue out process of *exigent*, be careful that the writs of proclamation be delivered, and the sheriffs do take care duly to execute the same.

They are not to suffer prisoners brought by habeas corpus to wander.

They are not to suffer prisoners brought by habeas corpus to wander.

By rule, Mich. 1654. *sect. 7.*
The same practice as in *C. B.*

By rule, Mich. 1654. *sect. 10.*
IT IS ORDERED by the court, That when a writ of *habeas corpus* is directed to a sheriff, warden of the *Fleet*, marshal or gaoler, the prisoner is to be brought in custody according to the writ at the day limited, without being permitted to wander abroad in the mean time on pretence of such writ.

The sheriffs fees for the allowance of the writ of supersedeas.

By rule, Mich. 15 *Eliz.* **IT IS ORDERED** by the court, That no sheriff, under-sheriff, or secondary, shall take for the allowance of any *supersedeas* upon any
capias

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in this court, any writ
returnable in this court, any writ
returnable in this court, any writ
returnable in this court, any writ
returnable in this court, any writ

To any writ returnable in
this court, any writ returnable
in this court, any writ returnable
in this court, any writ returnable
in this court, any writ returnable

By rule, Mich. 1624. It is
ORDERED by the court, That
no clerk, attorney or other
minister of this court shall enter,
or cause to be entered, any
retraxit with any under-sheriff,
county-clerk, or other minister
aforesaid whatsoever upon any
writ or writs of *exigi facias* issuing
out of and returnable in this
court until the same *retraxit* be
entered upon the same roll upon
which the said *exigent* is awarded
of that present term in which the
same is returnable, and that no
further proceedings be in that
cause after the party outlawed by
filing a new original, or by any
other means or ways whatsoever,
to deceive the King's Majesty's
officer of his seals, and the aforesaid
officer of the *superfedeas* office of
his just fees for making and sign-
ing of the writs of *superfedeas*
quia improvide to such writs of
exigent, or any other officers of
their just fees.

By rule, Mich. 1624. It is
ORDERED by the court, That
no clerk, attorney or other
minister of this court shall enter,
or cause to be entered, any
retraxit with any under-sheriff,
county-clerk, or other minister
aforesaid whatsoever upon any
writ or writs of *exigi facias* issuing
out of and returnable in this
court until the same *retraxit* be
entered upon the same roll upon
which the said *exigent* is awarded
of that present term in which the
same is returnable, and that no
further proceedings be in that
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their just fees.

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retraxit with any under-sheriff,
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writ or writs of *exigi facias* issuing
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court until the same *retraxit* be
entered upon the same roll upon
which the said *exigent* is awarded
of that present term in which the
same is returnable, and that no
further proceedings be in that
cause after the party outlawed by
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officer of the *superfedeas* office of
his just fees for making and sign-
ing of the writs of *superfedeas*
quia improvide to such writs of
exigent, or any other officers of
their just fees.

By rule, Mich. 1624. It is
ORDERED by the court, That
no clerk, attorney or other
minister of this court shall enter,
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county-clerk, or other minister
aforesaid whatsoever upon any
writ or writs of *exigi facias* issuing
out of and returnable in this
court until the same *retraxit* be
entered upon the same roll upon
which the said *exigent* is awarded
of that present term in which the
same is returnable, and that no
further proceedings be in that
cause after the party outlawed by
filing a new original, or by any
other means or ways whatsoever,
to deceive the King's Majesty's
officer of his seals, and the aforesaid
officer of the *superfedeas* office of
his just fees for making and sign-
ing of the writs of *superfedeas*
quia improvide to such writs of
exigent, or any other officers of
their just fees.

By rule, Mich. 1624. It is
ORDERED by the court, That
no clerk, attorney or other
minister of this court shall enter,
or cause to be entered, any
retraxit with any under-sheriff,
county-clerk, or other minister
aforesaid whatsoever upon any
writ or writs of *exigi facias* issuing
out of and returnable in this
court until the same *retraxit* be
entered upon the same roll upon
which the said *exigent* is awarded
of that present term in which the
same is returnable, and that no
further proceedings be in that
cause after the party outlawed by
filing a new original, or by any
other means or ways whatsoever,
to deceive the King's Majesty's
officer of his seals, and the aforesaid
officer of the *superfedeas* office of
his just fees for making and sign-
ing of the writs of *superfedeas*
quia improvide to such writs of
exigent, or any other officers of
their just fees.

capias or *exigent* above 12 d. upon
pain to forfeit for every such de-
fault 10 s.

No *retraxit* to be entered with the
under-sheriff till entered on the
roll.

By rule, Easter, 24 Car. 2. IT
IS ORDERED by the court,
That no clerk, attorney or other
minister of this court shall enter,
or cause to be entered, any
retraxit with any under-sheriff,
county-clerk, or other minister
aforesaid whatsoever upon any
writ or writs of *exigi facias* issuing
out of and returnable in this
court until the same *retraxit* be
entered upon the same roll upon
which the said *exigent* is awarded
of that present term in which the
same is returnable, and that no
further proceedings be in that
cause after the party outlawed by
filing a new original, or by any
other means or ways whatsoever,
to deceive the King's Majesty's
officer of his seals, and the aforesaid
officer of the *superfedeas* office of
his just fees for making and sign-
ing of the writs of *superfedeas*
quia improvide to such writs of
exigent, or any other officers of
their just fees.

Sheriff's deputies to be officers or
attorneys of the court.

By rule, Mich. 15 Eliz. IT IS
ORDERED by the court, That
according to the ancient custom
of this court, no person shall be
ad-

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admitted as a deputy of record unto any sheriff, unless he be an officer or attorney of this court, and that one of the deputies of record of every sheriff shall be resident or conversant within his sheriffwick, except *London, Middlesex*, and other cities and towns that be counties of *Wales*, and the county palatines of *Durham, Lancaster* and *Chester*; and that one of the said deputies shall be attendant upon this court by the second return of every term, at the furthest, and to continue to the end of the term, upon certain, pains all reasonable excuses of absence to be allowed.

Sheriffs to make a deputy on record before the last return of the term next after the taking their oath.

The same practice as in *C. B.*

Sheriff to make a deputy on record before the last return of the term next after the taking their oath.

By rule, *Mich. 1654. sect. 1.*
IT IS ORDERED by the court, That every sheriff have his deputy in court to return and receive writs, and that each deputy yearly before *Hilary term*, have his name and the place of his residence in *London* or *Westminster*, set and continued up in tables in the office of the clerk of the warrants.

Sheriffs not to make out warrants till the writ be delivered.

By rule, *15 Car. 2.* The same practice as in *C. B.*

Sheriffs not to make out warrants till the writ be delivered.

By rule, *Mich. 1654. sect. 2.*
IT IS ORDERED by the court, That to reform abuses by blank warrants granted by sheriffs, whereby persons are arrested and driven

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driven to extort compositions for their liberties without process of law; that no warrant be granted out to any officer to arrest or attach any person before a writ first come to the sheriff.

Under-sheriffs to be paid their fees for the return of writs of entry, writs of covenant, and other process.

By rule, Mich. 15 Eliz, IT IS ORDERED by the court, That no person or persons shall return any writ of entry in the *post* for a common recovery to be had, or writ of covenant for a fine to be levied, or any other process for the which fees do belong to the undersheriff, or the sheriffs deputies, unless they pay the old accustomed fee for the same, and the same writ to be assigned by the under-sheriff or one of the deputies as is aforesaid, on pain to forfeit for every such default *ten shillings.*

To cause sufficient summons to be given to jurymen.

By rule, Easter, 1651. IT IS ORDERED by the court, That all sheriffs do, on the return of every *venire facias*, cause sufficient summons to be given unto all jurymen that are by them returned on any juries for the preventing of sales,

IT

King's Bench.

IT IS LIKEWISE ORDERED, that all attornies do deliver unto the sheriffs of all counties of England within forty miles of London, all old *distringases* within eight days after the end of Hilary and Trinity term, or else none shall be received; and that all sheriffs do cause sufficient summons to be given to all jurymen in these old *distringases* a week before the affizes at least.

To return all writs before or immediately after the end of every term.

By rule, Easter, 6 Jac. 1. IT IS ORDERED by the court, That every sheriff before the end of every term, or immediatly after the end of every term, shall deliver and return into court, all writs of *latitat*, and writs thereupon issuing out of this court, to them and every of them directed and delivered, and upon return and delivery of these writs, or any of them, every sheriff, so returning the writs aforesaid, shall make oath here in court, that the aforesaid writs by him so then delivered and returned, were all the writs directed and delivered to him, and which came to his hands, and if any sheriff shall make default in this behalf, then very sheriff so making default, shall attend the court here, to expect the judgment of the court here for his contempt in this behalf committed.

Common Pleas.

It is ordered by the court, that every sheriff shall deliver and return into court, all writs of latitat, and writs thereupon issuing out of this court, to them and every of them directed and delivered, and upon return and delivery of these writs, or any of them, every sheriff, so returning the writs aforesaid, shall make oath here in court, that the aforesaid writs by him so then delivered and returned, were all the writs directed and delivered to him, and which came to his hands, and if any sheriff shall make default in this behalf, then very sheriff so making default, shall attend the court here, to expect the judgment of the court here for his contempt in this behalf committed.

It is ordered by the court, that every sheriff shall deliver and return into court, all writs of latitat, and writs thereupon issuing out of this court, to them and every of them directed and delivered, and upon return and delivery of these writs, or any of them, every sheriff, so returning the writs aforesaid, shall make oath here in court, that the aforesaid writs by him so then delivered and returned, were all the writs directed and delivered to him, and which came to his hands, and if any sheriff shall make default in this behalf, then very sheriff so making default, shall attend the court here, to expect the judgment of the court here for his contempt in this behalf committed.

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It is ordered by the court, that every sheriff shall deliver and return into court, all writs of latitat, and writs thereupon issuing out of this court, to them and every of them directed and delivered, and upon return and delivery of these writs, or any of them, every sheriff, so returning the writs aforesaid, shall make oath here in court, that the aforesaid writs by him so then delivered and returned, were all the writs directed and delivered to him, and which came to his hands, and if any sheriff shall make default in this behalf, then very sheriff so making default, shall attend the court here, to expect the judgment of the court here for his contempt in this behalf committed.

*King's Bench.**Common Pleas.*

To indorse on every scire facias the day it is left in their office.

By rule, Easter, 5 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this term, every writ of *scire facias*, of which notice shall be given to the defendant or defendants named in such writ, shall be delivered to, or left in the office of the sheriff to whom directed, *four days* before the return of such writ, exclusive of the day on which such writ is returnable.

AND that every first writ of *scire facias* on which a *nihil* shall be returned, shall be delivered to, or left in the office of the sheriff some time before the return of such writ, and that every writ of *alias scire facias* shall be delivered to, or left in the office of the sheriff *four days* exclusive before the return of such writ, and every sheriff shall write or indorse on every such writ, the day of the month in which the same is delivered to him or left in his office.

By note on rule, Trin. 1 Geo. 2. The sheriff is to indorse on every warrant granted by him, the attorney's name who sues out the writ to ground such warrant.

The

King's Bench.

The sheriff of Chester to return writs directed to him.

By rule, Trin. 21 Car. 1. **IT IS ORDERED** by the court, That the sheriff of the county of Chester shall return all writs issuing out of this court to him, directed according to the return of those writs, under the penalty of 50*l*.

The sheriffs of Wales to execute judicial writs

By rule, Hil. 19 Jac. 1. **IT IS ORDERED** by the court, That all such judicial writs, may and ought to be made and directed to the several counties of *Wales*, and ought to be executed by those sheriffs for the time being at their peril, as in all other counties of *England*.

S U M M O N S.

King's Bench.

Common Pleas.

No summons to attend, allowed during the sitting of the court.

BY rule, Hil. 17 Geo. 2. **IT IS ORDERED** by the court, That no attorney or other person shall be summoned to attend any justice of this court, nor any matters be transacted before such justice at his chambers, or elsewhere out of court during the sitting of the court at *Westminster*, and all orders and other transactions so to be made by such justices, shall be vacated.

¶ U u 2 SIT.

S I T T I N G S.

King's Bench

Causes to be entered in the judges book two days before the sitting, or a ne recipiatur may be entered.

BY rule, Hil. 15 W. & 16 C. 2. IT IS ORDERED by the court, That issues joined of any preceding term, shall be tried within the first week of every term, and that the *custos brevium* of this court, shall not seal any record of *nisi prius* of such issues after one week of every term, without the special licence of the Chief Justice of this court. *And it is further ordered*, that unless the causes to be tried at *London and Middlesex*, be entered with the Chief Justice of this court by the space of *two days* before the sittings upon which such causes are to be tried, the marshal may enter a *ne recipiatur* at the request of the defendant or his attorney.

At the sittings after term, no ne recipiatur till after proclamation.

By note on rule, Mich. 4 Ann. If a cause is to be tried at the sittings after term, no *ne recipiatur* can be entered until after proclamation made by order of the Chief Justice for bringing in the records, and then if the record be not brought in, the defendant's attorney may enter a *ne recipiatur*.

The

King's Bench.

Common Pleas.

The plaintiff, when hindered of a trial by a *ne recipiatur*, may try the cause at the next sitting on notice.

By rule, Mich. 4 Ann. IT IS ORDERED by the court, That if the defendant in any action in London or Middlesex, and to be tried at the sittings of the Lord Ch. J. of this court, shall enter a *ne recipiatur*, and by reason thereof hinder the plaintiff that he cannot proceed at that sitting, that then it shall be lawful to the said plaintiff to proceed to trial in the said cause at the next sitting of the said Lord Chief Justice, after the entering of the said *ne recipiatur*, on notice given during the said first sittings.

S O L I C I T O R S.

King's Bench.

Common Pleas.

Common solicitors not to practice unless admitted attorneys.

BY rule, Mich. 1654. sect. 1. IT IS ORDERED by the court, That for the future, common solicitors be not admitted to practice in this court, unless they are admitted attorneys of either bench, *provided* that this rule extend not to the managing of evidence at a trial, nor to private soldiers, or secretaries of corporations, or other persons in the causes of their masters.

Sun-

Sundays and holidays on which the court does not sit, when accounted law days.

King's Bench.

When one of the four or six days for putting in bail.

BY note on rule, Mich. 8 Ann. In this court, the four days and six days are reckoned exclusive, in the Common Pleas inclusive of the day of the return of the writ. If either the fourth or sixth day fall on a Sunday, the defendant has the Monday following to put in bail.

When one of the four or eight days to plead.

By note on rule, Trin. 1 Geo. 2. Sunday, or any holiday on which the court does not sit, or the office is not open, if it be not the last of those four days, is to be accounted a day within those rules.

When to plead in abatement.

By note on rule, Easter, 5 Ann. Pleas to the jurisdiction of the court, or in abatement, ought to be pleaded before the rule for pleading is out, and cannot be pleaded after a common imparlance, or unless the declaration be delivered after term, or so late in the term that the defendant is not bound to plead it that term, in both which cases, the defendant may, within the first four days

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inclusive

Common Pleas.

King's Bench.

inclusive of the next term, plead any plea in abatement, or to the jurisdiction of the court, as of the preceding term, but if such plea be not delivered or left in the office in time, (whether a rule to plead be given or not) such plea is not to be received.

Sunday, or any other day on which the court does not sit, is to be accounted as one of the *four days* unless it happens to be the last day.

Every plea of *tender*, or where the defendant alledges he was *always ready* to do any particular act, must be pleaded in like manner as pleas in *abatement*. If it be a plea of *tender*, the money must be brought into court, and the receipt of the proper officer be wrote on the plea before it is filed. *Vide rule Hil. 5 Jac. 1.*

When one of the eight or fourteen days in notices of trial.

By note on rule, *Mich. 4 Ann.* Eight days *exclusive* is sufficient notice of trial, or of executing inquiry in all cases, except causes in *London* and *Middlesex*, where the defendant lives above forty miles computed from *London*, then fourteen days notice must be given; and likewise except causes wherein no proceedings have been had within *four terms* after issue joined, there a term's notice must be given; and so likewise by *provisoe*, unless the cause so has been stayed by injunction or privilege.

When

Common Pleas.

King's Bench.

When one of the four days to move for a new trial, or in arrest of judgment.

By note on rule, *Easter*, 5 Geo 2. Sunday, or any other day on which the court does not sit, is not reckoned one of the *four days*, unless the rule be entered on the last day of the term, or within *four days* after the term, (during which *four days* it is the practice to enter those rules as of the last day of the term) and at the expiration of *four days exclusive* after entering such rule, judgment may be entered. This rule ought not to be entered before the day in *bank*, and is not necessary if the plaintiff be *non-suited*, for in that case judgment may be entered immediately after the day in *bank*.

T I P S

*King's Bench.**His fees on commitments.*

DECEMBER 17, 1730. 4 Geo. 2. To each of the *four tipstaffs* 2s. 6d. for each prisoner committed by the court, and carried to the *King's Bench* prison, in the whole 10s.

To the tipstaff that carries any prisoner committed at a judge's chambers to the said prison 6s.

Common Pleas.

When one of the four days to move for a new trial, or in arrest of judgment.

By note on rule, *Easter*, 5 Geo 2. Sunday, or any other day on which the court does not sit, is not reckoned one of the *four days*, unless the rule be entered on the last day of the term, or within *four days* after the term, (during which *four days* it is the practice to enter those rules as of the last day of the term) and at the expiration of *four days exclusive* after entering such rule, judgment may be entered. This rule ought not to be entered before the day in *bank*, and is not necessary if the plaintiff be *non-suited*, for in that case judgment may be entered immediately after the day in *bank*.

T I P S

*Common Pleas.**His fees on commitments.*

JANUARY 19, 1729, 3 Geo. 2. Every prisoner on a commitment, or a surrender at a judge's chambers, to pay the tipstaff 6s. 8d.

Every prisoner on a commitment on a *habeas corpus* at a judge's chamber, to pay the tipstaff 4s. 2d.

Every prisoner on a commitment in court, to pay the tipstaff 7s. 6d.

King's Bench.

Common Pleas.

To keep a book of the names of prisoners committed to his custody.

By rule, Hil. 3 Geo. 2. *IT IS ORDERED* by the court, That every tipstaff, to whom any prisoner shall be delivered in custody at a judge's chamber, shall keep a book containing the name of such prisoner, the time when he was taken into custody, to be signed by such judge's clerk, and such judge's clerk shall keep another book in which the like entry shall be made, signed by the tipstaff.

T R I A L.

King's Bench.

Common Pleas.

Due notice of trial to be given in all cases.

BY rule, Mich. 1651. *IT IS ORDERED* by the court, That due notice be given to the defendant on all trials at every assizes, when any cause shall be carried to trial, as well in old causes as in new causes, and likewise to the plaintiff in all causes to be tried by *provisoe* as well in London or Middlesex, as at the assizes.

No record to be signed before the issue be entered on the roll.

By rule, Mich. 1654. *sect. 21. IT IS ORDERED* by the court, That no record of *nisi prius* be signed before the issue be entered on the roll.

In causes to be tried at the circuits the writ and record to be entered together.

The same practice as in C. B.

On trials at the assizes, the writs and records to be delivered, to be entered with the marshal before the sitting of the court, after the commission day, except in Yorkshire and Norfolk.

The same practice as in C. B.

In causes to be tried at the circuits the writ and record to be entered together.

By rule, Trin. 10 & 11 Geo. 2. **IT IS ORDERED** by the court, that in every cause to be tried before the judges in their respective circuits, the writ and record shall be entered together, and that no record shall be received without the writ.

On trials at the assizes, the writs and records to be delivered, to be entered with the marshal before the sitting of the court, after the commission day, except in Yorkshire and Norfolk.

By rule, Hil. 14 Geo. 2. **IT IS ORDERED** by the court, That no writ and record of *nisi prius* shall be received at the assizes in any county in England, unless they shall be delivered to and entered with the marshal before the first sitting of the court after the commission-day, except in the counties of York and Norfolk, and there the writs and records shall be delivered to and entered with the marshal before the first sitting of the court, on the second day after the commission-day, otherwise they shall not be received.

And that every cause shall be tried in the order in which it is entered, without any preference or delay, unless it shall be made out to the satisfaction of the judge in open court, that it is impracticable

King's Bench.

Common Pleas.

cable or inconvenient so to do, who thereupon may make such order for the trial of the cause so put off as to him shall seem just.

And it is further ordered, That a list of the causes, when so entered as aforesaid, shall be made by the marshal and forthwith fixed up in some public place in the nisi prius court, there to remain during the whole time of the affizes.

In London and Middlesex, issues of a precedent term to be brought to the clerk of the Treasury, four days before the day of trial, and entered in the marshal's book four days before trial.

In London and Middlesex, issues of a precedent term to be brought to the clerk of the Treasury, four days before the day of trial, and entered in the marshal's book four days before trial.

The same practice as in C. B.

By rule, Mich. 1654. sect. 21. IT IS ORDERED by the court, That in all issues to be tried by nisi prius in London or Middlesex, on a record of a precedent term, the copy of the issue be brought to the clerk of the Treasury for the engrossing of records, four days at the least before the day of trial of such issue, and that all causes to be tried in London or Middlesex be entered into the marshal's book, four days before the day of trial.

King's Bench.

When eight days notice of trials or inquiries is sufficient in London or Middlesex.

The same practice as in C. B.

When fourteen days notice of trial necessary.

The same practice as in C. B.

In London and Middlesex notice may be continued to the next sitting.

The same practice as in C. B.

Common Pleas.

When eight days notice of trials or inquiries is sufficient in London or Middlesex.

By rule, Mich. 1654. *sess.* 21.
IT IS ORDERED by the court, That notice of trials or inquiries in London or Middlesex (the defendant dwelling within forty miles of London) be eight days exclusive of the day wherein notice is given.

When fourteen days notice of trial necessary.

By rule, Mich. 1654. *sess.* 21.
IT IS ORDERED by the court, That if the defendant lives above forty miles distant from London, notice of such trials and inquiries in London or Middlesex be fourteen days exclusive of the day of notice.

In London and Middlesex notice may be continued to the next sitting.

By rule, Mich. 1654. *sess.* 21.
IT IS ORDERED by the court, in London or Middlesex, if notice be given of a trial for one sitting and the plaintiff be not provided to proceed, if he give notice before that sitting, that he will try the next sitting, that to be held convenient notice.

King's Bench.

Common Pleas.

What notice must be given to prisoners.

By rule, Hil. 14 & 15 Car. 2. IT IS ORDERED by the court, That after issue joined, *ten days* notice at least, *exclusive* of the day of such notice to be given to the defendant, (being actually in the prison of the *Fleet*) of the time of trial of such issue to be had.

A term's notice must be given on issues joined above a year.

By rule, Mich. 1654. sess. 21. IT IS ORDERED by the court, That if an issue be joined above a year since in any case, then one term's notice to be given of the trial.

Where the plaintiff concludes ad patriam, the defendant is obliged to accept of notice of trial on the back of the pleadings.

By rule, Trin. 2 Geo. 1. IT IS ORDERED by the court, That in all cases where the plaintiff concludes *ad patriam*, the defendant's attorney, or clerk in court, shall be bound to accept of notice of trial on the back of such pleading, whether the same be delivered to the defendant's attorney or agent, or left in the proper office where the same may be left by the rule of the court. And such notice of trial so given or left as aforesaid, shall be as good and effectual as if issue had been actually joined.

In

King's Bench.**Common Pleas.**

In trials at bar, copies of the issue are to be delivered to the judges four days before the time appointed for the trial.

By rule, Mich. 3 Geo. 2. IT IS ORDERED by the court, That, in all causes which shall be tried at the bar of this court, the Lord Chief Justice and the rest of the justices of the said court shall, respectively, have copies of the issues in the said causes delivered to them *four days* before the time appointed for the trial of such causes.

The plaintiff's attorney to give timely notice to the court of the days of trial.

By rule, Hil. 9 Ann. IT IS ORDERED by the court, That the attorney for the plaintiff, in every cause which in such case shall come to be tried at the bar of this court, shall, before the *assign-day* of the the term in which such cause shall be appointed to be tried, give notice to the chief prothonotary of this court, or his secondary, of the day on which such cause is to be tried, that the same (as is usual) may be put down in the court-book, provided for that purpose, and in case such attorneys shall neglect so to do, that then, without motion and the special direction of this court, such cause shall not be tried that term; any precedent rule or practice to the contrary notwithstanding.

King's Bench

On trials at bar, each juror lying out one night after a privy verdict, to be allowed only 3 s. 4 d. for diet, besides the charges of his lodging.

The same practice as in C. B.

Common Pleas.

On trials at bar, each juror lying out one night after a privy verdict, to be allowed only 3 s. 4 d. for diet, besides the charges of his lodging.

By rule, Mich. 1654. *sess.* 22. **IT IS ORDERED** by the court, That a jury lying out one night, after a privy verdict delivered, there be allowed, for the diet of each jurymen that night, no more than 3 s. 6 d. a-piece, and for two criers to each of them, no more than 2 s. ordinary, besides the charge of the jurors lodging.

When a ne recipiatur may be entered at the sittings.

By rule, Hil. 8 Geo. 1. **IT IS ORDERED**, That *ne recipiatur* shall be allowed to be entered for the sittings of *nisi prius* after every term, unless the records of *nisi prius* and writs be made up and brought into court on or before the days of sitting respectively.

Proof of notice of trial to lie on the party bringing the cause to trial.

By rule, Mich. 1654. *sess.* 21. **IT IS ORDERED** by the court, That if notice be given to the attorney of the adverse party of a trial on an issue joined, it be taken to be good notice, and oath made of want of notice to the attorney to turn the proof of notice given to the party on him that brought it down to trial in that case.

King's Bench.

Common Pleas.

The costs to be taxed, unless notice be countermanded in due time.

By rule, Mich. 3 Geo. 2. IT IS ORDERED by the court, that no countermand of trial at the assizes shall be good, unless notice be given *two days* before the commission-day.

A new trial may be had where a verdict finds entire damages, and part not actionable, though judgment be arrested.

By rule, Mich. 1654. sect. 42. IT IS ORDERED by the court, That where a verdict finds entire damages where damages are the principal, and part not actionable, though judgment be arrested, yet, by rule of court, a *venire fac de novo* may issue as upon an ill verdict, and upon the new trial the party may sever his damages.

If plaintiff give notice of trial, and does not proceed, the defendant may try it by provisor giving due notice.

By rule, Mich. 1654. sect. 21. IT IS ORDERED by the court, That if the plaintiff give notice for a trial, and proceed not, the defendant may take it by provisor according to the law, giving notice *eight or fourteen days* as the case requires as *aforsaid*.

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How to be done in London and Middlesex.

By same rule, That in London or Middlesex. If no warning for a trial, then the defendant not to take it by *provisoe* to try it the same term, but afterwards he may take it by *provisoe* according to law, giving eight or fourteen days notice as the case requires.

The same practice as in C. B.

Note; By *stat. 14 Geo. 2.* The trial by *provisoe* is exploded, and the practice is, If plaintiff in any action neglects to bring such action on to be tried, the court at any time, on notice and motion, will give judgment for the defendant, as in case of a *nonsuit*, unless sufficient cause is shewn to the contrary, when the court will grant the plaintiff further time to try the cause; but if the plaintiff neglects to try the cause within the time allowed by the court, they will give judgment for the defendant *instanter*. *Vide stat. 14. Geo. 2.*

On trials at bar, the secondary to name forty-eight jurors, and the attorneys of each side to strike out twelve.

By rule, Trin. 8 Wm. 3. IT IS ORDERED by the court, That on any reference by the court here made to the secondary of this court, to return any jury, to name forty-eight sufficient jurors (to try any issue here at the bar) in the presence of the attorney

*King's Bench.**Common Pleas.*

attornies of both parties, if the attorney of one side shall make default to appear before the said secondary at the time by him appointed for the naming of the jurors aforesaid, or to strike out *twelve* of either part, in such case the said secondary shall name the jury aforesaid, in the absence of the attorney who shall make default thereupon, and shall strike out of the said *forty-eight* jurors *twelve* on the behalf of either party, and the rest of the jurors shall be returned by the sheriff to try the issue.

The party applying for a special jury to be at the expence thereof.

By note on the foregoing rule, Formerly the secondary and under-sheriff (who attends with the book of the freeholders names) had each a *guinea* aside from the plaintiff and defendant; but altered by *stat. 3 Geo. 2.* whereby the whole charge lies on the party applying for a special-jury.

The day of trial at bar to be appointed by the court, but plaintiff's attorney may countermand the same.

By note on rule, Mich. 4 Ann. The plaintiff may countermand notice of trial, tho' it be a trial at bar, (which are always appointed by the court) and prevent the cause being tried at the day, nor can it be brought to trial unless some day be appointed again by the court.

No

King's Bench

Common Pleas.

No trial at bar in an issuable term.

By note on rule, Mich. 4 Ann.
Trials at bar are never allowed in an issuable term, unless the crown be concerned in interest.

Trials not to be staid on not paying costs for not going to trial on former notice, except in ejectment.

By note on rule, Mich. 4 Ann.
Altho' the plaintiff does not proceed to trial, whereby costs are taxed for the defendant, and afterwards give new notice of trial, yet the court will not stay the trial for not paying those costs, (except in ejectment) because the defendant has another remedy to recover them.

If the plaintiff give notice of trial and proceed not, he shall not take down the cause to trial without new notice.

By rule, Mich. 1654. sect. 18.
IT IS ORDERED by the court, If the plaintiff give notice of a trial, and he proceed not, the plaintiff not to take it down to trial again, without new notice to be given, unless by consent or rule of court.

That in case of such warning and no proceeding, the defendant upon motion to have his costs of his former attendance, to be taxed by the prothonotary, unless the plaintiff give the defendant warning in convenient time, that he would not proceed or shew cause to be allowed in the court, in excuse of such costs.

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V E N U E.

King's Bench.

Actions on the case, trespass for goods, assault, or imprisonment, to be laid in their proper counties.

BY rule, Mich. 1654. sect. 5. *IT IS ORDERED* by the court, That actions on the case, trespass for goods, assault, or imprisonment, arising in any English county, to be laid in their proper counties, unless they arise where the justices of *nisi prius* seldom come; and because trespass and trover for goods, battery, imprisonment, and slander, must needs be notorious in what county they arise, the attorney knowingly laying them out of their proper county (unless in the cases before expressed, or for such other causes as shall be allowed by the judges of the court, and duly made appear to be true) to be severely punished.

In what transitory actions the venue may be changed.

By note on rule, Mich. 10 Geo. 2. In actions on the case, trespass for goods, assault, or imprisonment, and other transitory actions, except debt, *scandalum magnatum*, escape, deceit on a false return, against a carrier or lighterman on the statute of *usury*, covenant (and it is said on a note) are to be laid in their proper counties, or on motion made before the rules for pleading are out, and

affida-

Common Pleas.

Actions on the case, trespass for goods, assault, or imprisonment, to be laid in their proper counties.

The same practice as in K. B.

King's Bench.

affidavit that the action arose in the county of *A.* and not in the county of *B.* (where the action is laid) or else where the court will change the *venue*.

If evidence necessary to support the action arises in two counties, the *venue* may be laid in either county; or if the plaintiff will be bound to give some material evidence in the county where the action is laid, the court will not change the *venue*.

Before the defendant pleads, the venue may be changed on oath.

By rule, Mich. 1654. sect. 5. **IT IS ORDERED** by the court, That although the declaration be delivered *seven days* before the last day of the next preceding term, or after, yet, before plea, upon oath made, the *venue* may be changed on motion in the said transitory actions the next term after, and the defendant to plead to the new action as he should have done in the other without delay.

The venue may be changed on motion tho' the defendant come in by exigent.

By the foregoing rule, **IT IS ORDERED** by the court, That, on motion, the *venue* may be changed (on oath) tho' the defendant comes in by *exigent*.

Common Pleas.

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Common Pleas.

The privilege of barristers, attornies and officers of the court as to laying and altering the venue.

By note on rule, Mich. 10 Geo.

2. If a barrister, attorney, or officer of the court be plaintiff, and the action be laid in *Middlesex*, the court will not change the venue; and if any such person be a defendant, and sued in any other county than in *Middlesex*, the court will on motion alter the venue to *Middlesex*; but where they sue, or are sued in *autre droit*, as executors, &c. or jointly with other persons, then they lose their privilege.

On causes removed out of cities or towns where justices of nisi prius seldom come, if the action be transitory, the venue must be laid in that county wherein the city or town lies.

By rule, Mich. 1654. sect. 9.

IT IS ORDERED by the court, That on a cause removed by *habeas corpus*, out of the courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Pool*, which are counties where the judges of *nisi prius* seldom come, if the action be transitory, it must be laid in the county of *Keni*, *Southampton*, *York*, *Stafford*, or *Dorset*, where the town and county lies.

V E R D I C T.

King's Bench.

In special verdicts the unnecessary finding of deeds in hæc verba to be forborn.

BY rule, *Mich. 1654. s. 20. IT IS ORDERED* by the court, That in finding of special verdicts, where the points are single and not complicated, and no special conclusion, the council (if required) do subscribe the points in question, and agree to amend the omissions of mistakes in the mesne conveyance, according to the truth, to bring the point in question to judgment.

That unnecessary finding of deeds in *hæc verba* where the question rests not on them, but are only a derivation of title to be spared and found shortly, according to the substance they bear in reference to the deed, as a feoffment, lease, grant, &c.

When books are to be delivered to the judges on arguing special verdicts.

By rule, *Easter, 2 Jac. 2. IT IS ORDERED by the court, That on reading of any record here in court on a demurrer in law, special verdict, or writ of error, and thereupon a day is given to hear council of both parties, the books shall be delivered to the justices of this court, by the at-*

Common Pleas.

In special verdicts the unnecessary finding of deeds in hæc verba to be forborn.

The same practice as in *K. B.*

King's Bench.

tornies of both parties, by the space of *four days* before the day so by the court appointed, and that the exceptions, which shall be insisted on, on argument, shall be marked in the margin of these books.

Note. The practice of the court for a long time has been, to deliver the books only *two days* before the day appointed for the argument.

Common Pleas.

Copies of special verdicts to be delivered to the judges one week before the day of argument.

By rule, *Easter, 27 Car. 2.* IT IS ORDERED by the court, That every attorney of this court towards any such cause, shall deliver true copies of the record thereof, to the respective justices of this court, by the space of *one whole week*, at the least, next before the day appointed for such argument, *namely*, the attorney for the plaintiff one copy thereof to the Lord Chief justice, and another to the senior judge; and the attorney for the defendant like copies to each of the other two justices of this court for the time being, according to the ancient course here used, under such penalty as the court shall think fit to inflict on the attorney neglecting his duty therein.

AND IT IS FURTHER ORDERED by the court, That no argument by council on either side shall be heard at the bar, until books be delivered to all the judges.

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Provided nevertheless, That in case the attorney of either party shall not deliver books as he ought, then if the attorney on the other side, for expediting his clients cause, will deliver books to all the judges *three days* at the least before the argument, council shall be heard on his client's behalf at the day appointed, and the attorney, delivering books as aforesaid, shall be reimbursed the charges of delivering the *two books* which ought to have been delivered by the attorney of the adverse party, which charges the said attorney shall be bound to pay on demand thereof.

And lastly IT IS ORDERED, That if the charges of delivering the said *two books* shall not be paid before judgment shall be given in the cause, the charges of delivering the said books shall be allowed on taxing costs, and in that case the attorney shall not be compelled to pay the said costs; but if no costs are to be taxed, in that case, then the attorney, making default in delivering of books as aforesaid, shall be compelled to pay the charges of the copies so delivered by the attorney of the adverse party, by attachment or otherwise as the court shall think fit.

No cause to be put in the court-book to be argued after the last day of arguments, without special order.

By rule, Trin. 12 Geo. 1. *IT IS ORDERED* by the court, That no cause in any term after

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*King's Bench**Common Pleas.*

the end of this term, be put in the book of this court to be argued after the last day of arguments, unless the court here be thereupon moved and shall order it.

Note. The practice of the court now is, That there be no arguments on the four last and four first days of the term.

U N D E R - S H E R I F F S.

*King's Bench.**Common Pleas.*

Under-sheriffs delaying the execution or return of writs, taking undue fees, or detaining money liable to attachment.

BY rule, Mich. 1654. *sect. 2.*
IT IS ORDERED by the court, That for the prevention and remedy of delays and abuses in sheriffs, under-sheriffs, bailiffs of liberties and their deputies, and other bailiffs of sheriffs, &c. in the execution of process, and writs, if it shall appear that any such officer shall wilfully delay the execution or return of any process or execution, or shall take or require any undue fees for the same, or shall give notice to the defendant, thereby to frustrate the execution of any process or writ, or, having levied money, shall detain it in their hands after the times of the returns of their writs, besides the ordinary course of amerciaments, the contempt or

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misdemeanor appearing, an attachment, information, commitment, or fine, to be, as the case is, and this as well in case of a late sheriff or person before mentioned, as of them at present in office.

That to reform the abuses by blank warrants granted by sheriffs whereby persons are arrested and driven to extorted compositions for their liberty without process of law, no warrants be granted out to any officer, to arrest or attach any person before a writ first come to the sheriff.

And whereas sheriffs have taken immoderate and excessive fees for execution of writs of possession and restitution of possession, contrary to law, it is declared, that such immoderate fees ought not to be taken, and, in case such shall be taken, this court to proceed to punish the same according to law.

On service of a peremptory rule, to make return in six days, or liable to attachment.

Mich. 6 Geo. 2. NOTICE is hereby given to all sheriffs and under-sheriffs, that on being served with a rule peremptorily to return any writ issuing out of this court, or to bring in the body of any defendant within *six* days after notice, if the same be not done in the said time, they will be liable to an attachment without a further rule as heretofore.

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Common Pleas.

*King's Bench.**Common Pleas.*

By rule, Trin. 6 Geo. 3. **IT IS ORDERED** by the court, That after the last day of this term, every rule to be made for the sheriffs of the county of *Middlesex*, and the sheriffs of *London* to return writs or bring in the body or bodies of any defendant or defendants, will be made for such sheriff or sheriffs to return such writs, and bring in the bodies of such defendants within *four days* next after the service thereof.

Not to practice as an attorney during the time they remain in their office.

By rule, Mich. 1654. sect. 1. **IT IS ORDERED** by the court, That no under-sheriff or bailiff of sheriffs or liberties be admitted, during such their employment, to practice as attorneys, under pain of expulsion from the employment of an attorney, and not to be readmitted.

Deputy sheriffs to appear in court by the assign-day of the second return of every term.

By rule, Mich. 1654. s. 1. **IT IS ORDERED** by the court, That every sheriff have his deputy in this court, to return and receive writs, and that each deputy, yearly before *Hilary term*, have his name and the place of his residence in *London* or *Westminster*, set and continued up in tables in the office of the prothonotary.

That the clerks of *assize*, their deputies or assistants, do personally appear with their *potheas* on the

King's Bench.

the first day of *Easter* and *Michaelmas* term, and the deputy-sheriffs and all other officers of the court, do personally appear by the *essoign-day* of every second return of every term, and continue there during the residue of the term without some just cause to the contrary allowed by the court.

Common Pleas.

W A R R A N T S.

No blank warrants to be delivered by sheriffs, nor warrants granted before the writ is received.

BY rule, *Mich. 1654. sect. 2.*
IT IS ORDERED by the court, That to reform the abuses by blank warrants granted by sheriffs, whereby persons are arrested and driven to extort compositions for their liberty, without process of law, no warrants be granted out to any officer to arrest or attach any person before a writ first come to the sheriff.

No blank warrants to be delivered by the sheriffs, nor warrant granted before the writ is received.

The same practice as in *K. B.*

Warrants of attorney to be put in same term of the plea or imparlance.

By rule, *Trin. 35 Hen. 6. sect. 4.*
IT IS ORDERED by the court, That in every plea or imparlance entered by any person as attorney in any of the courts, that the so named attorney put in his warrant the same term of the plea or imparlance, under pain of foregoing the office of attorneyship of that place, and to be committed to prison, and to make fine after the discretion of the judges where any such deceit shall happen.

To

*King's Bench.**Common Pleas.*

To be filed of the term wherein any exigent is awarded, demurrer or issue joined, or judgment entered, or which of them shall first happen.

By rule Hil. 14 & 15 Car. 2. **IT IS ORDERED** by the court, That every attorney of this court do file his warrant of attorney of the term wherein any exigent is awarded, demurrer or issue joined, or judgment entered, or which of them shall first happen, on pain of 40s. for every time he offends, and be attainted by due examination made by the justices of this court, such warrant to be filed on or before the *essoign-day* of every Trinity term, and within the space of *twenty-one days* next after the end of every other term.

For preventing the negligence of attornies in filing their warrants, the stamp of the clerk of the warrants to be impressed on the judgment paper.

By rule, Mich. 5 Geo. 2. **IT IS ORDERED** by the court, That from and after the first day of the next term, no judgment whatsoever (except final judgment on *posseas* and writs of *inquiry*, and *nonprosses*) shall be signed by any of the prothonotaries of this court, unless the stamp of the clerk of the warrants of this court be first impressed on the paper whereon such judgment is to be signed, whereby it may appear that warrants of attorney are duly filed.

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The plaintiff's attorney to receive the fee for filing defendant's warrant of attorney on the delivery of the issue, on refusal, judgment.

By rule, Hil. 2 & 3 Jac. 2.
IT IS ORDERED by the court, That from henceforth every plaintiff's attorney, who shall prosecute any cause to issue, shall, upon delivery of the copy of such issue, receive of the defendant's attorney the fee for filing his warrant therein; and in case the defendant's attorney shall refuse to pay the plaintiff's attorney for the same, that the plaintiff's attorney shall sign judgment in like case as if the defendant's attorney had refused to pay for the copy of the issue, or entry of his plea, which said plaintiff's attorney shall file as well the defendant's as the plaintiff's warrant of attorney before his making up his record therein.

No record of nisi prius to be signed unless first stamped by the clerk of the warrants.

By the foregoing rule it is ordered by the court, That the clerk of the Treasury, for the time being, shall not for the future sign or seal any record of *nisi prius* unless the same be first signed or stamped by the clerk of the warrants or his deputy, to the end it may thereby appear that the warrants of attorney are duly filed.

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*King's Bench.**Common Pleas.*

No exigenter to receive any pluries capias, in order to make an exigent, unless first stamped by the clerk of the warrants.

By the foregoing rule, IT IS ORDERED by the court, That no exigenter shall receive any pluries capias in order to make an exigent or proclamation thereon, before the same be signed or stamped by the said clerk of the warrants, or his deputy, to the end it may likewise thereby appear that the warrants of attorney therein are duly filed.

The clerk of the warrants to attend in the Treasury three weeks after every issuable term, to receive warrants.

By the foregoing rule, IT IS ORDERED by the court, That the clerk of the warrants, by his deputy or other clerk, attend at the Treasury-chamber, where the records of *nisi prius* are sealed three weeks after every issuable term, or so long as records are sealed without a judge's warrant, there to receive and take the said warrants of attorney.

Defendant's warrant of attorney to appear to be subscribed, and not to be revoked.

By rule, Mich. 1654. sess. 9. IT IS ORDERED by the court, That according to *stat. 23 Hen. 6.* a prisoner taken on a *capias* in process be not discharged till he hath been bound to appear, unless
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the plaintiff or his attorney shall consent to take an appearance without bail, and in such case the warrant of attorney to appear to be subscribed or accepted by the defendant's attorney, and such warrant not to be revoked, on an attachment to be granted against the bailiff offending therein, or against the attorney refusing to appear or procure an appearance, having so subscribed or accepted.

Attornies subscribing, and refusing to enter appearance, liable to attachment.

By the foregoing rule, *sect. 13*:
IT IS ORDERED by the court, That any attorney of either bench accepting a warrant to appear, or subscribing a process, declaration, or warrant to appear, be compelled to cause appearance, or be liable to an attachment, or put out of the roll, as the case requires, and the party not to be received, to countermand such appearance after his retrieval.

Warrants of attorney on common recoveries to be left with the prothonotaries, to be filed with the fees.

By rule, *Mich. 29 Car. 2.* **IT IS ORDERED** by the court, as well by the consent of the *custos brevium*, as of the prothonotaries and clerk of the warrants of this court, that at all times hereafter when the said prothonotaries shall examine and sign the ex-

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King's Bench.

That where any writ or process is returned, and the same is sealed and duly returned, and all warrants of attorney thereupon taken without writ, to be left in their hands to be filed, with the usual fees for filing the same without *post terminum*.

Warrants of attorney to confess judgment by a person in custody, not binding unless his attorney be present.

The same practice as in C. B.

Common Pleas.

emplifications of such recoveries, they in their respective offices do then cause all the said writs, being sealed and duly returned, and all warrants of attorney thereupon taken without writ, to be left in their hands to be filed, with the usual fees for filing the same without *post terminum*.

Warrants of attorney to confess judgment, not to be taken from a person in custody, but in the presence of his attorney.

By rule, Hil. 14 & 15 Car. 2. **IT IS ORDERED** by the court, That no bailiff nor sheriff's officer shall presume to exact or take from any person being in his custody by arrest, any warrant to acknowledge a judgment, but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereunto, which said warrant shall be produced when the said judgment shall be acknowledged; and if any bailiff or sheriff's officer shall hereafter offend or do contrariwise, he shall be severely punished for so doing.

AND IT IS FURTHER ORDERED, That no attorney shall from henceforth acknowledge or enter, or cause to be acknowledged or entered, any judgment by colour of any warrant gotten from any defendant being under arrest, otherwise than is aforesaid.

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The defendant's attorney at the time of his appearing to give the plaintiff's attorney the warrant of attorney, and pay 4 d. for the same at the delivery of the declaration, otherwise judgment.

By rule, Mich. 5 Ann. IT IS ORDERED by the court, That the attorney for the defendant at the time of his appearance for such defendant, shall give the plaintiff's attorney the warrant of attorney for such defendant, and at the time of the delivery of the copy of the declaration, or taking thereof out of the office where it is filed, shall pay 4 d. for the said warrant of attorney, which warrant of attorney the said plaintiff's attorney shall file with the officer appointed for filing thereof at the same time when he files or ought to file the warrant of attorney for the plaintiff; and if such attorney for the defendant shall refuse to pay the plaintiff's attorney the said 4 d. for the said warrant of attorney in manner and form aforesaid; then such attorney for the plaintiff, on such refusal, may sign judgment against the defendant in such action by default.

May be filed at any time before defendant has pleaded.

By note on the foregoing rule, Tho' the warrant of attorney be not filed according to the statute, it is not error, for if the plaintiff file the warrant of attorney at any time before the defendant has pleaded.

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pleaded, it is sufficient. *Mod. Cases in Law and Equity*, p. 77.

Warrants of attorney to be entered on the judgment roll.

By rule, *Easter*, 4 *Jac.* 2. IT IS ORDERED by the court, that every clerk and attorney of this court, who hereafter shall enter, any cause of record, shall enter in the beginning of every cause so entered, the warrants of attorney for the plaintiff and defendant in such causes, otherwise their rolls shall not be filed nor received.

Common Pleas.

W R I T S.

*King's Bench.**Common Pleas.*

Original writs proper to the cause of action to be sued forth.

BY rule, *Hil.* 2 *Car.* 1. IT IS ORDERED by the court, That no attorney or clerk of this court hereafter shall sue forth a writ of trespass *vi et armis*, where the true cause of action is debt, on pain to forfeit for the first offence 20s. and for the second offence to be put out of the roll, and that no attorney or clerk, by consent or composition, shall take a declaration in debt, his client being arrested on an action of trespass *vi et armis*, or shall take a declaration for any greater debt than for which the defendant was arrested, but the defendant to have

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have costs of suit in such cases, for his unjust vexation according to law, and the ancient practice of this court.

No fees to be taken for the return of original writs, and the subsequent process thereon.

By rule, Mich. 17 Jac. 1. IT IS ORDERED by the court, That from henceforth no officers or ministers, attorney's clerks, solicitors, or other person or persons whatsoever, shall attempt to take or demand any such fees of any person or persons for the return of any such writs, on pain of imprisonment and other punishment due to extortion, and if the offender be any officer, attorney or clerk of this court, that then he or they shall be also disabled of his or their practice in this court.

Writs issuing out of the prothonotary's offices to be signed before sealed.

By rule, Mich. 1654. sect. 6. IT IS ORDERED by the court, That all executions, and all other writs issuing out of the prothonotaries offices, be duly signed by the respective prothonotaries before the same be sealed, and that no exemplification of any common recovery or other record, which ought to be examined and signed by the prothonotary, be sealed before the same be signed by the prothonotary, nor that any exemplification (except

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cept exemplifications of fines and common recoveries of the present and next precedent term) be sealed before they be first signed and examined by the clerk of the Treasury.

Latitats, and all other signable writs to be duly signed before sealing.

By rule, Easter, 15 Car. 2. **IT IS ORDERED** by the court, That the keepers, or deputy-keepers of the seal, appointed for sealing of writs issuing out of this court of *King's Bench*, or any of them, shall not seal, nor suffer to be sealed, any writ or writs of *latitat*, *habeas corpus*, *subpœna*, *scire facias*, or other signable writs issuing out of the said court, unless the same writs respectively be first signed with the sign of the said court, kept by the clerk appointed for that purpose.

All writs and process on originals, before defendant's appearance, to be signed by the filacer.

By the foregoing rule, **IT IS ORDERED** by the court, That all writs and other process on originals, shall, before the defendant in such suit appears thereon, be duly signed by the filacer of the proper county where such writ issues.

King's Bench.

Common Pleas.

Writs by original to be signed by him before sealing.

By rule, Hil. 31 Car. 2. *IT IS ORDERED* by the court, That original writs, which by law ought to be signed by the filacers of this court, shall be signed by the said filacers before such writs be sealed by the officer of this court, and that other writs in question be referred to the proper officers to examine and certify the same to this court.

What fines are to be paid on original writs.

By rule, Hil. 6 W. & M. *IT IS ORDERED* by the court, That all fines due to our Lord the King, and our Lady the Queen, in the court of our said Lord the King, and Lady the Queen, for, or on all actions for debt, and actions for damages, prosecuted in the court aforesaid, be received and collected as heretofore.

On all original writs where the damages laid exceed 40 l. fines are paid in the following proportion.

	£.	s.	d.
From 40 l. to 66 l. 13 s. 4 d. i. e. 100 marks,	—	2	6 8
100 marks to 100 l.	—	2	10 0
100 l. to 200 marks,	—	2	13 4
133 l. 6 s. 8 d. to 166 l. 13 s. 4 d.	—	0	16 8
166 l. 13 s. 4 d. to 200 l.	—	1	0 0
For every 100 marks more,	—	0	6 8
For every 100 l. more,	—	0	10 0

Notes.

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Note. Every *recordari*, *pone*, *accedas ad cur.* (except *de averiis* & *cattallis*) attaint, conspiracy, false judgment, and *dedimus potestatem*, do pay fine to the King, 6 s. 8 d.

The day and year of signing process, to be set down thereon.

By *Note on rule, Trin. 1 Geo.*
2. The day and year of signing process is to be set down thereon, *stat. 5 & 6 W. & M. cap. 21. 9 & 10 W. 3. cap. 25.* and the name of the attorney wrote on every writ or process, and writs of execution, and the warrants thereon. *Stat. 2 Geo. 2. c. 23.* But by *stat. 12. Geo. 2. cap. 13.* the not subscribing the attorney's name on the warrant shall not vitiate, provided the writ, &c. be regularly subscribed, and sheriffs are thereby obliged to subscribe the attorney's name on warrants, on penalty of 5 l.

On signing every new alias, pluries, and non omittas, a notice of the term when the latitat issued to be subscribed.

By rule, *Trin. 1656. IT IS ORDERED* by the court, That every clerk, according to ancient orders, shall, upon signing of every such writ of *alias* and *pluries*, *capias*, and of every *non omittas*, subscribe under the *alias*, *pluries*, *capias*, and *non omittas*, the term when the *latitat* issued forth, and that no writ of *alias*, *pluries*, *capias*,

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capias and *non omittas* in term time be signed before a note be delivered in, subscribed the term when the *latitat* was sued forth for the entering of the same; and that in the vacation time, the clerks do enter every such writ before it be signed.

AND IT IS FURTHER ORDERED, That the prothonotaries or one of them, do every term send for the under-sheriff of every county, city, town and village within this common wealth, and cause the said sheriffs and every of them, to bring before them all *latitats*, *alias pluries capias*, and *non omittas*, sued forth of this court and delivered to them, to the end the same may be perused, viewed, and examined by the prothonotaries or one of them, whether they be duly sued forth and signed or not.

Sheriffs to return all writs immediately after the end of every term.

By rule, *Easter, 6 Jac. 1.* **IT IS ORDERED** by the court, That every sheriff before the end of every term, or immediately after the end of every term, shall deliver and return into court, all writs of *latitat*, and writs thereupon issuing out of this court to them and every of them directed and delivered, and upon the return and delivery of those writs or any of them, every sheriff so returning the writs aforesaid, shall make oath here in court, that the aforesaid writs by him so then delivered or returned, were all

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all the writs directed and delivered to him, and which came to his hands; and if any sheriff shall make default in this behalf, then every sheriff so making default shall attend the court here to expect the judgment of the court here for his contempt in this behalf committed.

Sheriffs on service with a rule, to return writs in six days.

By rule, Mich. 6 Geo. 2. IT IS ORDERED by the court, That all sheriffs and under-sheriffs on being served with a rule peremptorily to return any writ issuing out of this court, or to bring in the body of any defendant within *six days* after notice, if the same be not done in the said time, they will be liable to an attachment without a further rule as heretofore.

All judicial writs to be executed by the sheriffs of Wales as in English counties.

By rule, Hil. 19 Jac. 1. IT IS ORDERED by the court, That all judicial writs may and ought to be made and directed to the sheriffs of the several counties of *Wales*, and ought to be executed by those sheriffs for the time being, at their peril, as in all other counties of *England*.

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Common Pleas

Concerning writs wherein the cause of action is especially set forth and expressed.

By rule, Hil. 2 Geo. 2. **IT IS ORDERED** by the court, That where any defendant shall be arrested by virtue of any process issuing out of this court, in which the cause of action shall be specially specified and expressed, or a copy of such process shall be delivered to any defendant according to the form of the statute in such case lately made and provided, and the plaintiff thereupon shall declare, the defendant in such case shall not have liberty of imparling without leave of the court in that behalf first to be granted, but shall plead thereunto within the time allowed by the course of the court to defendants sued by original writ, and for want thereof, judgment may be entered against such defendant by default.

No special writ when the cause of action is under 10l.

By note on rule, Hil. 2. Geo. 2. This rule is now enlarged to processes in the common form. See rules Trin. 5 & 6 Geo. 2. Mich. 10 Geo. 2. and stat. 5 Geo. 2. cap. 27. By which it is enacted, that no special writ nor process specially expressing the cause of action shall issue, unless the cause of action amount to 10l.

That

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King's Bench.

*That one or more persons may attend,
the seal on behalf of the King,
and stamp the writs.*

By rule, Hil. 25 Car. 2. IT IS ORDERED by the court, That the officers of this court who have the custody of the seal of the court, permit one or more persons to attend at all times the sealing of writs of the same court on behalf of our Sovereign Lord the King, and put a stamp or mark upon such writs so sealed or to be sealed until this court shall further order, so that no impediment may thereupon arise to the officers aforesaid in sealing the said writs.

*The like rule on behalf of the Earl
of Suffolk, then patentee of the
office.*

By rule, Easter, 32 Car. 2. IT IS ORDERED by the court, That the officers of this court who have the custody of the seal, permit one or more persons to attend at the time of sealing the writs of the said court, and fix on behalf of *James Earl of Suffolk*, a stamp or mark on every writ so sealed or to be sealed, until the court here shall otherwise order, so that it be done without charge to any of his Majesty's subjects, or hindrance to the officers aforesaid.

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The

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the officers of the seal may inspect writs in the custody of the under-sheriffs to see they are duly sealed.

By rule, Trin. 4 W. & M. IT
ORDERED by the court, that the several under-sheriffs of the several counties of this kingdom of England, permit these officers to search and inspect all the writs issued out of this court and delivered to them, and remaining in their respective custodies without any fee to be thereupon paid.

keepers of the seal to allow every clerk the sealing of one writ gratis every term.

By rule, Mich. 13 Car. 2.
Whereas at the complaint of the clerks of the chief clerk of this court, and their clerks, this court is given to understand, and be informed, that whereas, according to the use and custom of this court anciently used, the keepers of the seal of our Sovereign Lord the King for this court, have allowed and used, and ought to allow to every clerk of the chief clerk of this court, and every clerk of such clerk, at the end of every term, the sealing of one writ gratis, without any thing to be paid for the same, by the name of *je vous prie*, and that such allowance by such keepers of the seal aforesaid, hath been lately denied and detained.

It is ordered by the court, That the allowance aforesaid to the said clerks, according to the ancient use of the court here for the future be allowed by the keepers of the seal of our Sovereign Lord

King's Bench.

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Lord the King for this court, unless the said keepers of the seal shall shew cause to the contrary on *Monday next after the morrow of All Souls*.

In writs on recognizance of bail on ac etiam bills, &c. to be entered, or the defendant is not bound to accept of a declaration thereon.

By rule, *Easter, 15 Geo. 2.* Whereas by the rules of this court, in actions of debt upon any recognizance of bail on *mesne process*, the bail are allowed *eight days* in full term after the return of the process sued out and served upon any of them, to surrender the defendant in the original action, for the discharging him or themselves from such recognizance.

And whereas by the course of this court, the plaintiff suing out a writ in a plea of trespass, may declare in any action he thinks fit, which may be a surprise on such bail.

The court doth therefore order, That from and after the last day of this term, in all such writs or process to be sued out of this court upon any such recognizance of bail after the words *in a plea of trespass*, there shall be inserted the following clause, "*And also to a bill of the said plaintiff against the said defendant in a plea of debt upon recognizance, according to the custom of our court before us to be exhibited.*" otherwise the defendant or his attorney shall not be bound to accept of a declaration in debt upon such recognizance.

T H E
A D D E N D A.

A F F I D A V I T S.

King's Bench.

Affidavits of any cause of action, before process sued out, may be sworn before a commissioner altho' attorney for the plaintiff.

By rule, Easter, 15 Geo. 2. Whereas the swearing of affidavits before commissioners authorized to take affidavits in this court, in causes wherein such commissioners are concerned as attornies for the parties on whose behalf such affidavits are made, is and hath been disallowed as irregular, which with respect to affidavits made of the causes of action before process sued out, in order to hold defendants to bail, hath been found inconvenient.

It is ordered, That, from and after the last day of this term, all affidavits of any cause of action before process sued out to hold defendants to bail, may be sworn before any commissioner authorized to take affidavits in this court, although such commissioner be concerned as attorney for the plaintiff, and shall be deemed to be regularly taken.

Common Pleas.

Bailiffs

B A I L I F F.

King's Bench.

*Bailiffs not to be bail in any action
in this court.*

By rule, Mich. 14 Geo. 2. IT IS ORDERED by the court, That no sheriff's officer, bailiff, or other person concerned in the execution of process, be permitted to be bail in any action or suit depending in this court.

Common Pleas.

C A U S E S.

King's Bench.

Causes to be tried at nisi prius, in the order they are entered, and marshal to fix up a list in some public place.

By rule, Hil. 14 Geo. 2. IT IS ORDERED, by all the judges of England, That no writ and record of *nisi prius* shall be received at the assizes in any county in England, unless they shall be delivered to be entered with the marshal before the first sitting of the court, after the commission day; except in the counties of York and Norfolk, and there the writs and record shall be delivered to and entered with the marshal, before the first sitting of the court on the *second day* after the commission day, otherwise they shall not be received.

And that every cause shall be tried in the order in which it shall be so entered, without any preference or delay, unless it shall be

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be made out, to the satisfaction of the judge, in open court; that it is impracticable or inconvenient so to do, who thereupon may make such order for the trial of the cause so put off, as to him shall seem just.

And it is further ordered, That a list of the causes when so entered as aforesaid, shall be made by the marshal, and forthwith fixed up in some publick place in the *nisi prius* court, there to remain during the whole time of the affizes.

By rule, Mich. 27 Geo. 2. IT IS ORDERED by the court, That from and after the last day of Michaelmas term 1743, no record or writ of *nisi prius* will be received at any sitting after term in Middlesex, unless the same shall be delivered to and entered with the marshal within two days after the last day of every term.

And that no record or writ of *nisi prius* will be received at any sitting after term in London, unless the same shall be delivered to and entered with the marshal the day before the day to which the sittings in London shall be first adjourned.

And that every cause to be tried at *nisi prius* in London and Middlesex shall be tried in the court in which it is entered (beginning with remanets) unless it shall be made out to the satisfaction of the judge of *nisi prius* in open court, that there is reasonable cause to the contrary, who there-

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upon will make such order for the trial of the cause so to be put off as to him shall seem just.

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D E C L A R A T I O N S.

King's Bench.

No declaration shall be sufficient to detain a prisoner in custody of the marshal, unless an affidavit be made that the cause of action be 10l. or upwards.

By rule, Easter, 15 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this term, no declaration whereby any prisoner shall be charged in the custody of the marshal, shall be sufficient cause of detaining such prisoner in custody, unless an affidavit that the plaintiff's cause of action against such prisoner does amount to 10l. or upwards, shall be first made and filed with the clerk of the rules of this court, and the sum specified in such affidavit shall be indorsed by him upon such declaration, before leaving thereof with the turnkey.

Copies of declarations to be paid for before the defendant be admitted to plead.

By rule, Mich. 10 Geo. 2. IT IS ORDERED by the court, That from and after the last day of this present term in all causes depending in this court, the defendant's attorney shall receive
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R E C O R D S.

King's Bench.

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Records in Middlesex to be entered two days before the last day of every term.

By rule, Mich. 17 Geo. 2. IT IS ORDERED by the court, That from and after the last day of Michaelmas term 1743, no record or writ of *nisi prius* will be received at any sitting after term, in *Middlesex* unless the same shall be delivered to and entered with the marshal within *two days* after the last day of every term.

If in London, to be entered the day before the first adjournment of the sittings.

By same rule, no record or writ of *nisi prius* will be received at any sitting after term in *London*, unless the same shall be delivered to and entered with the marshal the day before the day to which the sittings in *London* shall be first adjourned.

F I N I S.

Common Pleas

May 1860

7

R. E. C. O. D.

May 1860

in the office of the clerk of the court

of the county of Washington

of the State of Maryland

of the year of our Lord one thousand eight hundred and sixty

and of the Independence of the United States the thirty-ninth

day of May

before me

the undersigned

notary public

for the county of Washington

State of Maryland

do hereby certify

that the within

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I N D E X

OF THE

MATTERS contained in this WORK.

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